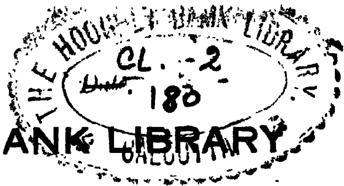


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CRIMINAL PROCEDURE CODE.

BEING AN ANALYTICAL ABSTRACT OF THE CRIMINAL PROCEDURE CODE, 1898, AS AMENDED UP TO DATE, WITH SHORT NOTES, UNIVERSITY QUESTIONS AND ANSWERS, ETC.

(Students' Companion Series, No. 7.)

FOURTH AND REVISED EDITION—1929.

BY

H. N. BANERJEE, M.A., B.L.

University Gold Medalist and Prizeman, Ritchie Prizeman,
Prasannakumar Tagore Law Scholar, etc.

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PREFACE TO FOURTH EDITION.

The following pages contain a thorough and accurate summary of the provisions of the Criminal Procedure Code, 1898, as amended up-to-date, with short notes thereon. The language of the Code has been simplified and re-written, where thought expedient, and Examination-Questions of the last 30 years (1900—1929) have been printed in the margin with a view to direct the attention of the students to portions demanding special care for the purpose of Examinations.

This book is mainly intended for the students and no pains have been spared to make it a useful guide for them. Although there are several other treatises of a like nature on the subject, yet none are so full and systematic as this one and none meet the requirements of the students better than this one ; and if the readers be pleased to consult the University Questions set during the past years, they will be convinced that there are some questions which cannot be completely answered from the bare text or from any other help book. This small treatise is expected fully to meet the requirements of the students and it is earnestly believed that a careful study of this book *alone* will enable the students to tackle any question that may be set at an Examination and will also impart to them a sound knowledge of the law on the subject.

In the preparation of this book, the Author has received much valuable help from commentaries on the Criminal Procedure Code by Messrs. Sanjib Row, Suntoko, Ramnath Aiyar, Sohoni, Sabonadiere and Mitra respectively and he feels greatly indebted to them for the same.

In this edition the book has been thoroughly revised and brought up-to-date.

CALCUTTA,
October, 1929.

Publisher.

CONTENTS.

☞**The following portions of the Code have been omitted from the syllabus for the Final Examination in Law of the Calcutta University :— Chapters I, IX, XIV, XXXIII to XL, XLII, XLIII and XLVI (*excepting Section 562*).**

THE
CODE OF CRIMINAL PROCEDURE.

(ACT V of 1898)

PART I—Preliminary.

CHAPTER I.—PRELIMINARY. (Secs. 1-5)

1 Commencement and Extent of the Code—

(1) The Criminal Procedure Code, 1898, came into force on the first day of July, 1898 *

(2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing contained in this Code shall affect any special or local law in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the Police in the towns of Calcutta and Bombay;

(*b*) heads of villages in the Presidency of Fort St. George; or

(*c*) village police-officers in the Presidency of Bombay:

(3) Extension of the Code to excepted persons.- The Local Government may, if it thinks fit, by notification in the official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons (S. 1.)

British India.—"British India' means all territories and places within His Majesty's dominions which are for the time

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*But *see* Secs. 54-56, 69, 83-86, 95, 102, 127, 375-376 *infra*.

being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India, (S 3. Cl. Act X of 1897).

Special or local law—*Vide* Secs. 41-42 I. P. C. Author's Student's Penal Code, 4th Edition, p. 20

Note.—The Code has ceased to be in force in the Hills, the Khasia and Jaintia Hills, the Naga Hills, the No Cachar subdivision of the Cachar district, the Mikir H tracts in the Nowgong district, the Dibrugarh Fronti Tracts in the Lakhimpur district and the Lushai Hill (*See* Assam Gazette, 1898, Part II, page 788 : Assam Fronti Tracts Regulation, 1880. S. 2).

The Code has been declared in force with modifications, in the Santhal Parganas, in Upper Burma (excepting the Shan States) in certain districts on the Sindh Frontier, and in the Andaman and Nicobar islands. The Code has been extended also to the district of Angul, Arakan Hill dis Chittagong Hill tracts, British Baluchistan, the Sch districts in Ganjam and Vizagapatam, the Shan Stat Upper Burma, the districts of Hazaribag, Lohardaga Ranchi district) Manbhum and Palamau, the Parganas Manpur and Dhalbhum and the Kolhan in Singhb district.

2 Definitions.—(1) In this Code fol words and expressions have the following meanin a different intention appears from the subject or co

(*a*) "**Advocate General**"—includes a so a Government Advocate, or where there is no Advocate General or Government Advocate, such officer as the Local Governmer from time to time, appoint in this behalf.

(*b*) "**Bailable**" and '**non-bailable offen**' "Bailable offence" means an offence shown bailable in the second schedule, or which made bailable by any other law for the t being in force; and "non-bailable offer means any other offence.

(*d*) **"Charge."**—includes any head of charge when the charge contains more heads than one : C. U. 1911(b).

(*e*) **"Clerk of the Crown.**—includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown :

As to the duties of the Clerk of the Crown under the Code *see* Ss. 216, 226 and 313 *infra*.

(*f*) **"Cognizable offence"** means an offence for which a police-officer, within or without the presidency-towns, may arrest without warrant : C. U. 1912 (a); Punj. 1915

Note—The nature and effect of some offences are such that a speedy investigation is called for, as soon as there is reason to suppose that any of them has been committed. In these cases, the Police are given power to arrest without warrant and to investigate of their own motion. They are styled "Cognizable cases" or "Cognizable offences "(Sabonadière, 10). Offences under Ss. 302-311 and Ss. 379—382 I. P. C. all Cognizable offences.

(*f*1) **"Cognizable case"**—means a case in which a police officer within or without the presidency-towns, may, in accordance with the second schedule of the Code, or under any law for the time being in force, arrest without warrant : C. U. 1909.

(*g*) **"Commissioner of Police"**—includes a Deputy Commissioner of Police :

(*h*) **"Complaint"**—means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer : C. U. 1909, 1915 (a), 1915 (b). Punj. 1915; All. 1914.

Note.—Two conditions are to be satisfied in order to bring an allegation under a complaint *viz.*, (1) the allegation must be made to a Magistrate and (2) the allegation must be made with a view to the Magistrate's taking action under this Code.

C. U. 1915 (a), Bom. 1914.

(i) **"European British subject" means—**

(i) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony or

(ii) any subject of His Majesty who is the child or grand child of any such person by legitimate descent.

Note.—Naturalisation is effected by Act of Parliament or by certificate of a Secretary of State by virtue of 7 & 8 Vict. C. 60.

A man's domicile is the place in which he has voluntarily fixed the habitation of himself and his family not for a mere personal or temporary purpose but with the present intention of making a permanent home until some unexpected event shall occur to induce him to adopt some other permanent home. *See* Secs 7—18 of the Indian Succession Act and Author's Indian Law of Succession, p. 13 *et seq.*

(j) **"High Court"** means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras, Bombay, Allahabad, Patna, Lahore and Rangoon and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sindh : in other cases "High Court" means the highest Court of criminal appeal or revision for any local area : or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf :

(k) **"Inquiry"** includes every inquiry, other than a trial, conducted under this Code by a Magistrate or Court :

Note.—A proceeding under Chapter XII of the Code (Disputes about immoveable property) is an enquiry within

ıı ·· ning of this clause (22 Cal. 898). For instances of see Ss. 98, 117, 133, 145, 176, 202, 208 etc.

A trial begins when the accused is called upon to plead to charge, and a Magistrate's proceedings before this stage is reached are in the nature of an enquiry.

Distinguish between trial, enquiry and investigation.

(*l*) **"Investigation"** includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

Mad. 1916, Bom. 1919, All. 1913.

Distinction between Inquiry and Investigation.—An "investigation" is a proceeding conducted by the Police or by some one authorised by a Magistrate to do so, whereas an "inquiry" means a proceeding taken by a Magistrate or a Court.

(*m*) **"Judical proceeding"** includes any proceeding in the course of which evidence is or may be legally taken on oath :

C. U. 1900, 1915 (a).

Note.—*Compare* S. 193, Expl. 1 of the Indian Penal Code. The power to take evidence on oath is the characteristic test of judicial proceedings.

(*n*) **"Non-cognizable offence"** means an offence for which a police-officer, within or without a presidency town, may not arrest without warrant :

C. U. 1915 (a), 1915 (b).

Note—Non-cognizable offences include those which are of a kind in respect of which the discretion of a court seems needed to decide whether a person complaining has made out a legal case justifying the under-taking of an enquiry. (Sabonadière, 13). Offences under Ss. 153-A, and 161-166 I. P. C. are all non-cognizable offences.

(n^1) **"Non-cognizable case"** means a case in which a police-officer, within or without a presidency town, may not arrest without warrant :

(*o*) **"Offence"** means any act or omission made punishable by any law for the time being in force ; it also includes any act in respect of

C. U. 1915 (b).

which a complaint may be made under secti
20 of the Cattle-trespass Act, 1871 :

(p) "**Officer in charge of a police-static**" includes when the officer in charge of the po station is absent from the station-house or unal from illness or other cause, to perform his dut the police-officer present at the station-h who is next in rank to such officer and is al the rank of constables or, when the Governn so directs, any other police-officer so pres

(q) "**Place**" includes also house, building, and vessel :

(r) "**Pleader**" used with reference to any ceeding in any Court, means a plead mukhtar authorised under any law for the being in force to practise in such Court, includes (1) an advocate, a vakil and an attorn of a High Court so authorised, and (2) ar other person appointed with the permissior the Court to act in such proceeding :

(s) "**Police-station**" means any post or p declared, generally or specially, by the L Government to be a police-station and inclu any local area specified by the Local Gove ment in this behalf :

(t) "**Public-Prosecutor**" means any per appointed under S. 492, and includes son acting under the directions of a Prin secutor and any person conducting a pr on behalf of His Majesty in any High Cour the exercise of its original jurisdiction :

(u) "**Sub-division**" means a subdivision of district :

C. U. 1913 (a); Punj. 1915, 1917.

(v) "**Summons case**" means a case relating an offence, and not being a warrant-case :

Note.—A Summons case is, therefore, a case relating an offence punishable with imprisonment for a term not excee ing 6 months or fine or whipping or any of these offence combined.

(*w*) "**Warrant case**" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

C. U. 1900, 1912 (b); Bom. 1912; Punj. 1915, 1917.

Note.—Warrant cases are those where a court taking ognizance and having to obtain the attendance of the accused hould usually issue a *warrant* in the first instance and ummon cases are those where such a court should usually ssue a *summons* in the first instance. In the great majority f cognizable cases, a warrant should issue, in the first instance nd in the great majority of non-cognizable cases, summons hould issue in the first instance. (Sabonadiere, 14) s. 302-318 I. P. C. afford instances of cases where a warrant ould ordinarily issue in the first instance, while Ss. 323-326 ford instances of cases where a summon shall ordinarily ssue in the first instance. With the exception of offences ealt with under Ss. 227 and 326 I. P. C. all offences where a ummons should ordinarily issue in the first instance are ailable.

(2) "**Words referring to acts.**—Words which efer to acts done, extend also to illegal omissions:

What is the distinction between a summons case & a warrant case? C. U. 1925 (a)

(3) **Words to have same meaning as in Indian Penal Code**—All words and expressions used n this Code and defined in the Indian Penal Code, and not lefined in this Code, shall be deemed to have the meanngs respectively attributed to them by that Code (S. 4.)

3, (1) **Trial of offences under Penal Code.**—All offences under the Indian Penal Code shall be nvestigated, inquired into, tried and otherwise dealt with according to the provisions of this Code.

(2) **Trial of offences against other laws.**—All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of this Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. (S. 5)

Give a short history of the codification of the rules of Criminal Procedure in

Object of the Code.—The object of the Criminal Procedure Code is to provide a machinery for the punishment of

India. What do you think is the object of the Code? C.U. 1922 (a)

offences against the substantive criminal law. (12 Cal. 535; 13 Bom. 590; 16 Bom. 580). One great end of the Criminal Procedure is the prevention and punishment of crime. (16 Bom. 661). *

Give a short history of the origin and development of the law of procedure in respect of criminal cases in British India. Would it be correct to say that the Criminal Procedure Code is purely adjective law? C.U. 1921 (a)

In India, the substantive portion of the Criminal Law has been codified and enacted as the Penal Code while the portion dealing the procedure of the Criminal Courts has been enacted as the Criminal Procedure Code †. The necessity of supplementing the Penal Code by rules of procedure for preventing offences and bringing offenders to justice easily appears from the following considerations: *First*, expense, delay or uncertainty in applying the best laws for the prevention and punishment of offences would render those laws useless or oppressive. *Secondly*, the law relating to Criminal Procedure is more constantly used, and affects a great number of persons than any other law. The offender and the Individual injured are, as a rule, the only persons immediately affected by the commission and punishment of a crime. But in the measures prescribed for preventing crimes and prosecuting criminals, any one, however, unconnected with a given offence, may find himself involved. As a judge, a magistrate, a soldier, a volunteer, a policeman or even a private citizen, everyone is liable to become an active party in preventing the commission of crimes, in stopping the progress of crimes

*The principal objects of a Code of Criminal Procedure are "to provide the means and lay down the methods by which the facts concerning an offence committed or supposed to be committed, may be ascertained as speedily and accurately as possible; by which persons reasonably supposed to be guilty may be brought before the courts; by which, when this has been done an impartial enquiry before a court may be secured; by which the courts are to reach their decisions after full consideration of all the available and admissible evidence which it may be proper to take; and by which, when there is a conviction, the infliction of the penalty properly ordered by the court is to be secured." (Sabonadiere's Trial of Criminal Cases in India, p. 7.)

† The Criminal Procedure Code is not purely an adjective law or law of procedure. It also contains provisions in the nature of substantive law. See, for instance, Chapters IV, VIII, IX, X. XI, XII, XIII, which deal partly with substantive law.

continuous in their nature or in arresting offenders. In India, moreover, private persons are liable to serve in trying cases as jurors or assessors. For these reasons, the Government of India has, from the earliest times, been long and zealously labouring to enact a Code of Criminal Procedure which should be easily understood, cheap, expeditious and just. (*Vide* Whitley Stoke's Anglo-Indian Codes, Vol. II and R. Aiyar's Criminal Procedure Code, Vol. I.)

History of Codification of Criminal Procedure in British India—In 1847 the Government of India issued instructions to the Indian Law Commissioners to prepare a scheme of pleading and procedure with forms of indictment adopted to the provisions of the Penal Code: and a scheme with several forms was accordingly prepared by Messrs. Cameron and Elliot and submitted with a report in 1648. This draft was examined and considered by a new set of commissioners who produced a draft code which was introduced into the Legislative Council in 1857 and was ultimately passed as Act LXV of 1861. This Code came into force on 1st January, 1862 but it was inapplicable to the Presidency towns. This Act was amended by Acts XXXIII of 1861, XV of 1862, VIII of 1866 and VIII of 1869. In 1872, the principal code and its amending Acts were repealed and replaced by Act X of 1872. This Code also was not applicable to the courts established by Royal Charter in Calcutta, Madras and Bombay. For these courts as well as for the High Court at Allahabad and the Chief Court at Lahore, provision was made by Act X of 1875. The Code of 1872 was also inapplicable to the Presidency Magistrates' Courts at Calcutta, Madras and Bombay. For these, provision was made by Act IV of 1877. Then came the consolidating Act X of 1882 which replaced and consolidated the provisions of the said Acts of 1872, 1875 and 1877 and other enactments then in force relating to the Criminal Procedure. The Code of 1882, amended from time to time, by various enactments was in force for nearly a period of 15 years, when act V of 1898 was passed, consolidating and amending the various

enactments then in force relating to the Criminal Procedure. The Act of 1898 has been amended by various subsequent enactments ending with the amending Acts of 1923. (*See* Whitley Stoke's Anglo-Indian Codes. Vol. II. Sanjib Row's and R Aiyar's Criminal Procedure Code Vol. I).

PART II—Constitution and powers of Criminal Courts and Offices.

CHAPTER II—CONSTITUTION OF CRIMINAL COURTS AND OFFICES. (Secs. 6-27.)

A.—Classes of Criminal Courts :

Give a brief sketch of the constitution of criminal courts in British India under the Code of Criminal Procedure. C. U. 1916 (b) What are the classes of Criminal Courts constituted under the Criminal Procedure Code? What sentences are the said Courts respectively authorized to pass? C. U. 1920(a), 26(a). How are Magistrates classified? C. U. 1913 (a) How many classes of Criminal Courts are there in British India under Cr.

Classes of Criminal Courts.—Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there are five classes of Criminal Courts in British India, namely :—

I.—Courts of Sessions :
II.—Presidency Magistrates :
III.—Magistrates of the first class :
IV.—Magistrate of the second class.
V.—Magistrate of the third class. (S. 6)

B.—Territorial Division :

1. (1) **Sessions divisions and districts.**—Every province (excluding the presidency-towns) shall be a sessions-division, or shall consist of sessions-divisions and every sessions-division shall, for the purposes of this Code, be a district or consist of districts.

(2) **Power to alter divisions and districts.**—The Local Governments may alter the limits or the number of such divisions and districts.

(3) **Existing divisions and districts maintained till altered.**—The sessions divisions and districts existing when this Code comes into force shall be sessions-divisions and districts respectively unless and until they are so altered.

(4) **Presidency-towns to be deemed districts.**—Every presidency-town shall, for the purpose of this Code, be deemed to be a district. (S. 7)

P. C.? Name them. C. U. 1925 (a)

(2) (1) Power to divide districts into sub-divisions.—The Local Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division and may alter the limits of any sub-division.

(2) **Existing sub-divisions maintained**—all existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code. (S. 8)

C.—Courts and offices outside the Presidency-towns :

1. Courts of Sessions. (1) The Local Government shall establish a Court of Sessions for every sessions-division, and apoint a judge of such Court.

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting ; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions-division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.

(5) All courts of Session existing when this Code comes into force shall be deemed to have been established under this Act. (S. 9)

2. (1) District Magistrate.—In every district outside the presidency-towns the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) **Additional District Magistrate.**—The Local Government may appoint any Magistrate of the

first class to be an Additional District Magistrate and such additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force as the Local Government may direct.

(3) For the purposes of S. 192, sub-sec. (1), S. 407 sub-sec. (2), and S. 528, sub-secs. (2) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate. (S. 10).

3. Officers temporarily succeeding to vacancies in office of District Magistrate.—Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate. (S. 11)

4. (1) **Subordinate Magistrates**—The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the Local Government or the District Magistrate, subject to control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) **Local limits of their jurisdiction.**—Except as otherwise provided by such definition, the jurisdiction and powers of such person shall extend throughout such district. (S. 12)

5 (1) **Power to put Magistrate in charge of sub-division.**—The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

(3) **Delegation of powers to District Magistrate.** The Local Government may delegate its powers under this section to the District Magistrate. (S. 13)

6. **Special Magistrates.**—(1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases or in regard to cases generally in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such terms as the Local Government may, by general or special order, direct.

(3) The Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-sec. (1)

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force. (S. 14)

7. **Benches of Magistrates**—(1) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in cases, or such classes of cases only, and within such local limits as the Local Government thinks fit.

(2) **Powers exerciseable by Bench in absence of special direction**—Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a

Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class. (S. 15),

8. Power to frame rules for guidance of Benches—The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects :—

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session. (S. 16).

What is the nature of the power of control which a District Magistrate has over his subordinate Magistrates? C. U. 1907, 1912 (b).

9. (1) Subordination of Magistrates and Benches to District and Sub-divisional Magistrates—All Magistrates appointed under Ss. 12, 13, and 14, and all Benches contituted under S. 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches :

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the sub divisional Magistrate, subject, however, to the control of the District Magistrate.

What power of control have Sessions Judges over subordinate courts? C.U 1912 (b)

(3) Subordination of Assistant Sessions Judges to Sessions Judge—All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Session Judge or, if there be no Additional or Assistant Judge, by the District Magistrate and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constitued under Ss. 12, 13, 14, and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided. (S. 17).

D.—Courts of Presidency Magistrates :

1. Appointment of Presidency Magistrates.—(1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

(3) A Presidency Magietrate may be appointed under this section for such term as the Local Government may, by general or special order, direct.

(4) The Local Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the Local Government may direct. (S. 18.)

2. Benches.—Any two or more of such persons may (subject to the rules made by the Chief Presidency

Magistrate under the power hereinafter conferred) sit together as a Bench (S. 19.)

3. Local limits of jurisdiction.—Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto as such limits are defined under the law for the time being in force for the regulation of ports and port-dues. (S. 20).

4. Chief Presidency Magistrate—(1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;

(*b*) the times and places at which Benches of Magistrates shall sit ;

(*c*) the constitution of such Benches ;

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session ; and

(*e*) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates including Additional Chief Presidency Magistrates, are subordinate to the Chief Presidency Magistrates and may define the extent of their subordination. (S. 21.)

E.—Justices of the Peace :

1. Justices of the Peace for mufassal—Every Local Government, so far as regards the territories subject to its administration, may, by notification in the official Gazette, appoint such persons resident within British India and not being the subjects of any foreign State as it thinks fit to be Justice of the Peace within and for the local area mentioned in such notification (S. 22.)

2. Ex-officio Justices of the Peace—In virtue of their respective offices, the Governor-General, Governors, Lieutenant-Governors and Chief Commissioners, the Ordinary Members of the Council of the Governor-General, and the Judges of the High Courts are Justices of the Peace within and for the whole of British India, Sessions Judge and District Magistrates are Justices of the Peace within and for the whole of British India, Sessions Judge and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates. (S. 25)

F.—Suspension and Removal :

1. Suspension and removal of Judges & Magistrates.—All Judges of criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government : Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority. (S. 26).

2. Suspension and removal of Justice of the Peace.—The Local Government may suspend or remove from office any Justice of the Peace appointed by it. (S. 27).

CHPTER III.—POWERS OF COURTS (Ss. 28-41)

A.—Description of Offences cognizable by each Court.

What are the different classes of criminal Courts constituted under the Cr. P. C. and the sentences they are competent to pass? C. U. 1926 (a), 1920 (a).

1. Offences under Penal Code—Subject to the other provisions of this Code, any offences under the Indian Penal Code may be tried—

(*a*) by the High Court, or

(*b*) by the Court of Session, or

(*c*) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable. (S. 28).

Illustration—A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

2. Offences under other laws.—(1) Subject to the other provisions of this Code any offence under any other law shall. when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by High Court or subject as aforesaid, by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable (S. 29).

Can a 2nd or 3r class Magistrate try an European British subject who claims to be tried as much? C. U. 1927 (b).

2A. Trial of European British Subjects.—No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such. (S. 29 A)

2B. Jurisdiction in the case of Juveniles.—Any offence, other than one punishable with death or transportation for life, committed by any person who, at the date when he appears or is brought before the Court, is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the Local Government to exercise the powers conferred by section 8, sub-section

(1), of the Reformatory Schools Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby. (S. 29B)

3. Offences not punishable with death— In the territories respectively administered by the Lieutenant-Governor of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in those parts of the other Provinces in which there are Deputy Commissioners or Assist. Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death. (S. 30)

What are the sentences which an Assistant Sessions Judge is competent to pass? C. U. 1917 (b).

An Assistant Sessions Judge sentences an accused person to 7 years' rigorous imprisonment. Discuss the legality of the procedure C. U. 1921 (suppl)

B. Sentences which may be passed by Court of various classes.—

1. Sentences which High Court and Sessions Judges may pass.—(1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding 7 years, or of imprisonment for a term exceeding 7 years. (S. 31).

2. Sentences which Magistrates may pass— (1) The Courts of Magistrates may pass the following sentences, namely :—

Give a classification of the Courts of Magistrates and enumerate the sentences which they are respectively competent to pass. C. U. 1917 (b)

(a) Courts of Presidency Magistrates and of Magistrates of the first class :	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law ; Fine not exceeding one thousand rupees ; Whipping.

How are Magistrate classified and what are their respective powers? C. U. 1913 (a).

(*b*) Courts of Magistrates of the second class :	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ; Fine not exceeding two hundred rupees.
(*c*) Courts of Magistrates of the third class :	Imprisoment for a term not exceeding one month ; Fine not exceeding fifty rupees.

Enumerate the various classes of Magistrates and state their respective powers. C U. 1921 (suppl).

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass. (S. 32)

3. Power of Magistrates to sentence to imprisonment in default of fine.—(1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default : Provided that—

A first-class magistrate at the conclusion of a trial sentences the accused to two years' and one year's imprisonment respectively on two different charges, the sentences to run consecutively. Discuss the legality of the procedure. C. U. 1919 (b)

(*a*) the term is not in excess of the Magistrate's powers under this Code ;

(*b*) in any case decided by a Magistrate where imprisonment has been awarded as a part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

A is tried by a Magistrate of the first class for house-breaking and grievous hurt at the same trial, and sentenced to 3 years' impri-

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under S. 32. (S. 33).

Thus, if a first class Magistrate passes a sentence of 2 years' imprisonment and fine and awards 6 months' further imprisonment in default of payment of fine, then though

the whole sentence is one of more than 2 years imprisonment, it is a legal sentence.

sonment. Is the sentence lagal ? C. U. 1913 (a)

At the same trial, A is convicted of murder of X and of grievous hurt on Y ; he is sentenced to transportation for life under S. 302 I. P. C. and rigorous imprisonment for 3 years' under S. 324 I. P. C. Can the two sentences be made to ran concurrently ? Would it make any difference it there were distinct trials ? C. U. 1920 (b)

Magistrates' power to sentence to imprisonment for non-payment of fine.—Ss. 65, 66, and 67 of the Indian Penal Code generally regulate the nature and duration of the sentence of imprisonment in default of payment of fine. But in regard to the powers of the *Magistrates* to inflict imprisonment in default of payment of fine, the above provisions are subject to and restricted by S. 32 and the provisos to S. 33 of this Code. The powersof criminal Courts to sentence to imprisonment for non-payment of fine would, therefore, in the first instance be regulated by Ss. 65-67 of the Penal Code, but those of *Magistrates* would next be restricted by the powers of each Magistrate under S. 32, of this Code, that is to say, supposing that under the Penal Code, a sentence of imprisonment for a certain term should be passed in default of payment of fine, a Magistrate's sentence would be limited by the term of imprisonment which, as a substantive sentence, he would pass under S. 32. If, however, the sentence of fine is a sentence in addition to imprisonment [Proviso (*b*)] then the Magistrate's powers of awarding imprisonment in default of payment of fine are limited to one-fourth of his ordinary powers. There is no suc' restriction imposed where the sentence is one of fine only [Proviso (*a*)] and therefore it would seem that the period of imprisonment in such a case depends upon the terms of Ss. 65-67 of the Penal Code and the Magistrate's general powers uuder S. 32 of this Code. The effects of Ss. 65—77, I. P. C. and Ss. 32-33 Cr. P. C. read together would be as follow ;—

1. *In case of offences punishable with imprisonment as well as fine, if the sentence awarded be one of fine only*—the term of imprisonment which can be awarded in default of payment of the fine—(*a*) shall not exceed one-fourth of the maximum imprisonment provided for the offence by the Penal Code, *and* (*b*) shall not exceed the maximum imprisonment which the trying Magistrate is empowered to award under S. 32 of the Criminal-Procedure Code.

II. *In case of offences punishable with imprisonment as well as fine, if the sentence awarded be one of imprisonment and fine both*—the term of imprisonment which can be awarded in default of payment of the fine—(*a*) shall not exceed one-fourth of the maximum imprisonment provided for the offence by the Penal Code, *and* (*b*) shall not exceed one-fourth of the maximum imprisonment which the trying Magistrate is empowered to award under S. 32 of the Criminal Procedure Code.

III. *In case of offences punishable with fine only*—the term of imprisonment which can be awarded in default of payment of the fine—(*a*) shall not exceed the maximum imprisonment which the trying Magistrate is empowered to award under Sec. 32 Cr. P. Code, *and* (*b*) shall not exceed the following scale :—

	Amount fine.			Imprisonment in default of fine.
(*a*)	Not exceeding	Rs. 50	...	Not exceeding 2 months
(*b*)	,, ,,	Rs. 100	.	,, ,, 4 ,,
(*c*)	Exceeding	Rs. 100	..	,, ,, 6 ,,

Illustrations.—(*a*) A is convicted of the offence of extortion punishable under sec. 384 I. P. C. with imprisonment of either description for 3 years or fine or both, and sentenced by a 1st class Magistrate to undergo imprisonment for a period of 2 years and also to pay a fine of Rs. 200. In default of payment of the fine A can be sentenced to imprisonment for an additional period of 6 months.

[Under Sec. 65 I. P. C., *A.*, in default of payment of the fine may be sentenced to a period not exceeding 9 months *i. e.* one-fourth of 3 years, the maximum imprisonment provided for the offence. But under proviso (*b*) to sec. 33 Cr. P. C. read along with Sec. 32 of the Code, the maximum period for which A may be imprisoned for non-payment of the fine, cannot in the present case, exceed 6 months *i.e.* one-fourth of two years, the maximum imprisonment awardable by a 1st class Magistrate under Sec. 32 Cr. P. Code.]

(*b*) A is convicted of the offence of theft punishable under Sec. 379 I. P. C. with imprisonment for 3 years or fine or both. and sentenced by a 1st class Magistrate, to pay a fine of Rs. 250. In default of payment of the fine, A may be sentenced to imprisonment for nine months.

(*c*) In the above case. if A is sentenced to pay a fine of Rs. 200 by a 2nd class Magistrate he can be sentenced to imprisonment for six months for non-payment of the fine. In the same case, had A been sentenced to pay a fine of Rs. 50 by a 3rd class Magistrate, he can be sentenced to imprisonment for one month for non-payment of fine.

(*d*) A is convicted of the offence of theft under S. 379 I. P. C. and sentenced by a 2nd class Magistrate to a term of imprisonment for six months and also to pay a fine of Rs. 200. In default of payment of the fine, A can be sentenced to imprisonment for six weeks *i.e.* one-fourth of six months, the maximum imprisonment that a Magistrate of the 2nd class can inflict.

(*e*) A is convicted of the offence of unlawful compulsory labour puuishable with imrisonment for 1 year or fine or both under S. 374 I. P. C. and sentenced by a 3rd class Magistrate to undergo imprisonment for one month also to pay a fine Rs. 50. In default of payment of the fine, A may be sentenced to imprisonment for a week *i.e.* one-fourth of one month the maxium imprisonment that a Magistrate of the 3rd class can inflict.

(*f*) A is convicted of an offence punishable under S. 278 I. P. C. with a fine of Rs. 500 and sentenced by a 1st class Magistrate, to pay a fine of Rs. 250. In default of payment of the fine, A may be sentenced to imprisonment for 6 months.

(*g*) In the above case, if A is convicted and sentenced by a 2nd class Magistrate to pay a fine of Rs. 200, he may be sentenced to imprisonment for 6 months, in default of payment of the fine. In the same case, had A been convicted and sentenced by a 3rd class Magistrate to pay a fine of Rs.

50, he may be sentenced to imprisonment for one month, in default of payment of the fine.

What sentences can a Court of sessions in the muffassal pass upon European British subjects? C. U. 1927 (b)

4. Higher powers of certain District Magistrates.—The Court of a Magistrate specially empowered under S. 30 may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years. (S. 34).

4A. Sentences which Courts and Magistrates may pass upon European British Subjects.—Notwithstanding anything contained in Ss. 31, 32 and 34—

(*a*) no Court of Session shall pass on any Eurepean British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and.

(*b*) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years or fine which may extend to one thousand rupees or both. (S. 34 A).

5. Sentence in cases of conviction of several offences at one trial.—(1) When a person is convicted at one trial. of two or more offences, the Court may subject to the provision of S. 71 of the Indian Penal Code, sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct unless the Court direct that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years: **Maximum term of punishment.**

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under S. 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal the aggregate of consecutive sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence. (S. 35).

"Convicted at one trial etc."—This section and its provisos have no application in cases where a person is tried *separately* and not at one trial, for each several distinct offences committed by him. It has reference only to the conviction of an accused person of two or more distinct offences at one trial. It does not include the case of separate trial held on the same day for separate offences committed by the same person (2 Weir. 30). The restriction in this section is limited to cases in which the Magistrate is at liberty to hold one trial for distinct offences under S. 234 of the Code.

C.—Ordinary and Additional Powers :

1. **Ordinary powers of Magistrates**—All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers." (S. 36)

2. **Additional powers conferrable on Magistrates.**—In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by Local Government or the District Magistrate as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate. (S. 37)

3. Control of District Magistrate's investing power.—The power conferred on the District Magistrate by S. 37 shall be exercised subject to the control of the Local Government. (S. 38).

D. Conferment, Continuance and Cancellation of powers :

1. Mode of conferring powers.—(1) In conferring powers under this Code the Local Government may, by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered. (S. 39)

2. Powers of officers appointed.—Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same Local Government, he shall unless the Local Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed. (S. 40)

3. Powers may be cancelled.—(1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate. (S. 41).

PART III. General Provisions. (Ss. 42-105)

CHAPTER IV.—AID AND INFORMATION TO MAGISTRATES, POLICE AND PERSONS MAKING ARRESTS. (Ss. 42-45)

1. Public when to assist Magistrates and police.—Every person is bound to assist a Magistrate or

police officer reasonably demanding his aid, whether within or without the presidency-towns—

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest ;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property. (S. 42)

Is a private person bound to assist a police-officer in the execution of his duties ? If so, when ? C.U. 1910 (b) What duties are laid upon the public generally as to the prevention of offences and the bringing of offenders to justice ? C. U. 1908.

2. Aid to person, other than police officer, executing warrant.—When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant. (S. 43)

Note.—Under this section, assistance to be given is not obligatory as under S. 42 but is merely optional.

3. Public to give information of certain offences.—(1) Every person, whether within or without the presidency-towns, aware of the commission of or of the intention of any other person to commit any offence punishable under any of the following sections of the Indian Penal Code, namely, 121, 121-A, 122, 123, 124, 124-A, 125, 126, 130. 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British india (S. 44)

Note—Intentional omission to give information required by this section is punishable under Ss. 176 and 202 of the Penal Code.

4. Village-headmen, accountants, land-holders and others bound to report certain matters.—(1) Every village-headman, village-accountant, village watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier in charge of the management of that land and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may possess respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent ;

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender ;

(*c*) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under S. 143, 144, 145, 147, or 148 of the Indian Penal Code ;

(*d*) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances ; or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been commited in respect of such person ;

(*e*) the commission of, or intention to commit, at any place out of British India near such village any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 231, 232, 233, 234, 235, 236, 237, 238, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, 460, 489-A, 489-B, 489-C, and 489-D ;

(*f*) any matter likely to affect the maintenance of order or the prevention of crimes or the safety of person or property respecting which the District Magistrate, by general or special order, made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

(*g*) "village" includes village-lands ; and

(*i*) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

(3) Appointment of village headman by District Magistrate and Sub-divisional Magistrate in certain cases for purposes of this section.—Subject to rules in this behalf to be made by the Local Government, the District Magistrate or Sub-divisional Magistrate may from time to time appoint one or more persons with his or their consent to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.

CHAPTER V.—ARREST, ESCAPE AND RETAKING. (Ss. 46-67.)

A.—Arrest generally.

1. **Arrest how made.**—(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

(2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life. (S. 46).

2. **Search of place entered by person sought to be arrested.**—If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in or being in charge of such place shall on demand of such person acting as aforesaid or such police officer allow him free ingress thereto and afford all reasonable facilities for a search therein (S. 47)

3. **Procedure where ingress not obtainable.** If ingress to such place cannot be obtained under S. 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it. (S. 48.)

Breaking open zanana.

4. **Power to break open doors & windows for purposes of liberation.**—Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who having lawfully entered for the purpose of making an arrest is detained therein. (S. 49.)

5. **No unnecessary restraint.**—The person arrested shall not be subject to more restraint than is necessary to prevent his escape (S. 50.)

6. **Search of arrested person.**—Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of the bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles other than necessary wearing apparel, found upon him (S. 51).

7. **Mode of searching women.**—Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency. (S. 52).

8. **Power to seize offensive weapons.**—The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all

weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested. (S. 53).

B.—Arrest without Warrant.

1. When police may arrest without warrant. —Any police officer may, without an order from a Magistrate and without a warrant, arrest—

When can a police officer who is not in charge of a police station arrest a person without an order from a Magistrate and without a warrant? C. U. 1920 (b), 23 (b), 25 (a). When can a Police Officer arrest a person without an order from a Magistrate and without a warrant? C.U. 1919 (a), 1927 (b). Does the Code make any distinction between Police Officer of different ranks in this respect? If so what? C.U. 1919 (a).

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned ;

secondly, any person having in his possession without lawful excuse, (the burden of proving which excuse shall lie on such person), any implement of house breaking ;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Local Government :

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

sixthly, any person reasonably suspected of being a deserter from His Majesty's Army Navy or Air Force or of belonging to His Majesty's Indian Marine Service and being illegally absent from that service :

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been

received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which if committed in British India would have been punishable as an offence, and for which he is under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ;

eighthly, any released convict committing a breach of any rule made under S. 655 sub-sec. 3 ; and

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) This section applies also to the police in the town of Calcutta. (S. 54)

2. Arrest of habitual vagabonds, robbers, etc. (1) Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precaution to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions, with a view to committing a cognizable offence ; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself ; or

(*c*) any person who is by repute a habitual robber, house-breaker or thief, or a habitual receiver of stolen property knowing it to be stolen or who by repute habitually commits extortion or in order to the committing of extortion habitually

puts or attempts to put person in fear of injury.

(2) This section applies also to the police in the town of Calcutta. (S. 55)

Note.—This section is intended for the suppression of habitual bad characters, whom an officer in charge of the police-station suddenly finds within his jurisdiction, or about whom he has good cause to fear that they will commit serious harm, before there is time to apply to the nearest Magistrate empowered to deal with the case under S. 112 of the Code.

3. Procedure when police-officer deputes subordinate to arrest without warrant.—(1) When any officer in charge of a police-station or any police-officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) This section applies also to the police in the town of Calcutta. (S. 56)

4. Refusal to give name and residence.—(1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction. (S. 57).

5. Pursuit of offenders into other jurisdiction—A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, persue such person into any place in British India. (S. 58).

6. Arrest by private persons and procedure on such arrest.—(1) Any private person may arrest (a) any person who in his view commits a *non-bailable and cognizable* offence, or (b) any proclaimed offender, and, without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of S. 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of S. 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released. (S. 59)

7. Person arrested to be taken before Magistrate or officer in charge of police-station.

When can a private person arrest without warrant? C.U. 1929(b). Discuss the legality or otherwise of the arrest by A, a private person, of B who is found attempting to pluck a mango from A's garden without A's consent. Assuming the arrest to be legal, what should A do with B after arrest? C. U. 1929(a). [*Theft* is a cognizable & non-baible offence. *Criminal Trespass* is a cognizable but a bailable offence.]

When is a private person empowered to arrest a person? State what such person is required to do after making the arrest. C.U. 1913(b). When can a private person make an arrest, and what is the procedure to

be adopted in such a case? C. U. 1920(b) 23 (b), 24 (b).

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station. (S. 60)

When can a private person arrest an offender? What is his duty on making such arrest? C. U. 1928 (a)

8. Person arrested not to be detained more than twenty-four hours.—No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under S. 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. (S. 61).

Note—This section refers only to persons *arrested without warrant*; but S. 81 *infra* applies to persons arrested under a warrant.

9. Police to report apprehensions.—Officers in charge of police stations shall report to the District Magistrate or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise. (S. 62).

10. Discharge of person apprehended.—No person who has been arrested by police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate. (S. 63).

11. Offences committed in Magistrates' presence—When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody. (S. 64).

12. Arrest by or in presence of Magistrate. Any Magistrate may at any time arrest or direct the arrest in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. (S. 65).

13. Power, on escape, to pursue and retake.—If a person in lawful custody escapes or is rescued the person from whose custody he escapes or is rescued, may immediately pursue and arrest him in any place in British India, (S. 66).

14. Provisions of Ss. 47, 48 and 49 to apply to arrests under S. 66.—The provisions of Ss. 47, 48 and 49 shall apply to arrests under S. 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest (S. 67)

CHAPTER VI—PROCESSES TO COMPEL APPEARANCE (Ss. 68-93.)

A.—Summons,

State briefly the various steps that may be taken to compel an accused person to appear before a criminal Court. C. U. 1911 (a) What are the successive steps for enforcing the attendance of an accused person before a Magistrate and how are they carried out ? C. U. 1919 (a).

1. **(1) Forms of summons.**—(1) Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may from time to time, by rule, direct.

(2) **Summons by whom served.**—Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(3) This section applies also to the public in the towns of Calcutta and Bombay. (S. 68).

2. (1) **Summons how served.**—The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(2) **Signature of receipt for summons.**—Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in British India. In such case

the service shall be deemed to have been effected when the letter would arrive in ordinary course of post. (S. 69)

Note—A summons may be issued (1) to the accused to answer to the accusation of an offence, (2) to a witness, (3) to a person to show cause against some order, or (4) to a juror or assessor.

3. Service when person summoned cannot be found.—Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or in a presidency-town, with his servant residing with him ; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate. (S. 70).

4. Procedure when service cannot be effected as before provided.—If service in the manner mentioned in Ss. 69 and 70 cannot, by the exercise of due diligence, be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides ; thereupon the summons shall be deemed to have been duly served. (S. 71).

5 (1) Service on servant of Government or of Railway Company.—Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the officer in which such person is employed ; and such head shall thereupon cause the summons to be served in manner provided by S. 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of the service (S. 72).

6 Service of summons outside local limits.—When a Court desires that a summons issued by it shall be served at any place outside local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magis-

trate within the local limits of whose jurisdiction the person summoned resides or is, to be there served. (S. 73).

7 Proof of service in such cases and when serving officer not present.—(1) When a summons issued by a Court served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by S. 69 or S. 70) by the person to whom delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court. (S. 74)

B.—Warrant of Arrest.

Describe the procedure prescribed for the issue and service of a warrant of arrest. C. U. 1925 (b).

1. (1) Form of warrant of arrest—Every warrant of arrest issued by a Court under this Code shall be in writing singned by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench and shall bear the seal of the Court.

(2) Continuance of warrant of arrest.—Every warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed. (S. 75).

Note.—A warrant of arrest may be issued against (1) a person accused of an offence, (2) a person required to show cause against a Magistrate's order, (3) a person required to attend as a witness, (4) a person for breach of a bond taken under this Code to appear before a Court, (5) a person acquitted, when an appeal has been preferred againt the order of acquittal under S. 217 or (6) a juror or assessor.

2. Court may direct security to be taken—(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that if such person executes a bond with suffi-

cient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(*a*) the number of sureties ;

(*b*) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound and

(*c*) the time at which he is to attend before the Court.

(3) Recognizance to be forwarded.—Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court (S. 76.)

3 (1) Warrants to whom directed—A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed but any other Court issuing such a warrant may if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons and such persons shall execute the same.

(2) Warrants to several persons.—When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them. (S. 77).

4. Warrant may be directed to landholders, etc. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or subdivision for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is

in, or enters on his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under S. 76. (S. 78).

5. Warrant directed to police-officer.—A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed. (S. 79).

6. Notification of substance of warrant.—The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant. (S. 80).

7. Person arrested to be brought before Courts without delay.—The police-officer or other person executing a warrant of arrest shall (subject to the provisions of S. 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person (S. 81).

8. Where warrant may be executed—A warrant of arrest may be executed at any place in British India. (S. 82).

9. Warrant forwarded for execution outside jurisdiction—(1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it

to be executed in manner hereinbefore provided within the local limits of his jurisdiction (S. 83.)

10. Warrant directed to police-officer for execution outside jurisdiction.—(1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town of Calcutta. (S. 84)

11. Procedure on arrest of person against whom warrant issued.—When a warrant of arrest is executed outside the district in which it was issued, the person arrested, shall, unless the court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under S. 76, be taken before such Magistrate or Commissioner or District Superintendent. (S. 85)

12. Procedure by Magistrate before whom person arrested is brought—(1) Such Magistrate or District Superintendent or Commissioner shall, if the per-

son arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under S. 76, on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under S. 76 (S. 86).

C.—Proclamation and Attachment.

1. Proclamation for person absconding.—(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Define "proclaimed offender". What steps can a court take when it has reason to believe that a person against whom a warrant has been issued has absconded? C. U. 1922 (a). What can the court do if a person absconds after the issue of warrant? C.U. 1927 (a)

(2) The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied

with and that the proclamation was published on such day (S. 87).

2. **Attachment of property of person absconding.** (1) The Court issuing a proclamation under S. 87 may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it

thinks it expedient order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector be continued by his legal representative.

(6B) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section (2) in the Court of such Magistrate.

(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made.

Provided that if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.

(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute ; but subject to the result of such suit, if any, the order shall be conclusive.

(6E) If the proclaimed person appear within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which case the Court may cause it to be sold whenever it thinks fit. (S. 88).

3. Restoration of attached property.—If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under sub-section (7) of S. 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him. (S. 89)

D.—Other Rules regarding Processes.

When can a Court empowered to issue summons for the appearance of a person issue a warrant for his arrest? C.U. 1927(a).

1. Issue of warrant in lieu of, or in addition to, summons—A Court may, in any case in which it is empowered by the Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons: or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure (S. 90)

2. Power to take bond for appearance.—When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court. (S. 91).

3. Arrest on breach of bond for appearance.—When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him. (S. 92)

4. Provisions of this Chapter generally applicable to summonses & warrants of arrests. The provisions contained in this Chapter relating to a summons and warrant and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code. (S. 93)

CHAPTER VII.—PROCESSES TO COMPEL PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR DISCOVERY OF PERSONS WRONGFULLY CONFINED Ss. (94-105),

A.—Summons to produce.

1. Summons to produce document or other thing.—(1) Whenever any Court or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power

such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons or order,

(2) Any persons required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, Ss. 123 and 124 or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities (S. 94)

2. Procedure as to letters and telegrams.— (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose he may require the Postal or Telegraph Department as the case may be, to cause search to be made for and to detain such document, parcel, or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court. (S. 95).

B—Search-warrants.

When may a Court issue a search warrant? C. U. 1927 (b)
Under what circumstances can a criminal court issue a search warrant? C. U. 1904.

1. When search-warrant may be issued.—(1) Where any Court has reason to believe that a person to whom a summons or order under S. 94 or a requisition under S. 95, sub-sec. (1) has been or might be addressed will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person,

When may a Court issue a search warrant? What is the procedure to be adopted in the execution of that search warrant? C.U 1924 (b). Under what circumstances may search warrants be issued? What safeguards have been introduced by the Legislature in the execution of a search warrant? C. U. 1922 (a).

or where the Court considers that the purposes of any inquiry trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search warrant ; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities. (S. 96).

2. Power to restrict warrant.—The Court may, if it thinks fit, specify in the warrant the particular place or part therof to which only the search or inspection shall extend ; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified. (S. 97).

3. Search of house suspected to contain stolen property, forged documents, etc.—(1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instrument or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place, or if a District Magistrate, Sub-divisional Magistrate or a Presidency Magistrate, upon information and after such enquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in S. 292 I. P. C. or that any such obscene objects are kept or deposited in any place, he may by his warrant authorize any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials, as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps coins, instruments or materials or such obscene objects knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging or the said obscene objects to have been or to be intended to be sold, let to hire distributed, publicly exhibited, circulated imported or exported.

(2) The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin, shall, so far as they can be made applicable, apply respectively to—

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,

(*b*) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts and

(*c*) instruments or materials for making pieces of metal in contravention of that Act, (S. 98).

4. Disposal of things found in search beyond Jurisdiction—When in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate ; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court. (S. 99).

4A. Power to declare certain publications forfeited, and to issue search warrants for the same—(1) Where—

(*a*) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(*b*) any document.

wherever printed, appears to the Local Government to contain any seditious matter, or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under S. 124-A or S. 153-A or S. 295-A of the Indian Penal Code, the Local Government may, by notification in the local Official

Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty and thereupon any police-officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation (S. 99-A).

4B. Application to High Court to set aside order of forfeiture.—Any person having any interest in any newspaper, book or other decument, in respect of which an order of forfeiture has been made under S. 99A, may, within two months from the date of such order, apply to the High court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in sub-sec. (1) of S. 99-A (S. 99B).

4C. Hearing by Special Bench.—Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges. (S. 99C).

4D. Order of Special Bench setting aside forfeiture. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made contained seditious or other matter of such a nature as is referred to in sub-sec. (1) of S. 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges (S. 99D).

4E. Evidence to prove nature or tendency of newspapers.—On the hearing of any such application

with reference to any newspaper, any copy such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made. (S. 99E).

4F. Procedure in High Court.—Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications. (S. 99F).

4G. Jurisdiction barred.—No order passed or action taken under S. 99A shall be called in question in any Court otherwise than in accordance with the provisions of S. 99B (S. 99G).

C.—Discovery of Persons wrongfully confined.

State the provisions laid down in the Code of Criminal Procedure relating to search for a person confined under such circumstances that the confinement amounts to an offence. C. U. 1914 (a).

1. Search for persons wrongfully confined.—If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith and the person if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper. (S. 100).

D.—General Provisions relating to Searches.

1. Direction, etc. of search warrants.—The provisions of Ss. 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under S. 96, S. 98, S. 99A or S. 100. (S.101).

2. Persons in charge of closed place to allow search.—(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on pro-

duction of the warrant allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by S. 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of S. 52 shall be observed. (S. 102).

3. Search to be made in presence of witnesses.—(1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses ; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) **Occupant of place searched may attend.** The occupant of the place searched, or some person in his behalf, shall in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under S. 102, sub-sec. (3), a list of all things taken possession of shall be delivered to such person at his request.

(5) Any person who, without reasonable, cause refuses or neglects to attend and witness a search under this section when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under S. 187 of the Indian Penal Code. (S. 103).

E.—Miscellaneous.

1. Power to impound document, etc., produced.—Any Court may, if it thinks fit, impound any document or thing produced before it under this Code. (S. 104).

2. Magistrate may direct seasch in his presence.—Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant. (S. 105).

PART IV.—Prevention of Offences: (Ss. 106—153.)

CHAPTER VIII.—SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR. (SS. 106-126).

A.—Security for Keeping the peace on Conviction.

1. Security for keeping the peace on conviction. (1) Wherever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under S. 143, S. 149, S. 153A or S. 154 thereof, or of assault or other offence involving a breach of the peace, or of abetting the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

Give a concise and systematic idea of proceedings directly dealing with prevention of offences under the Code of Criminal Procedure. C U. 1921 (a).

What are the methods prescribed in the Criminal Procedure Code for prevention of offences ? Enumerate them. C. U. 1921 (a)

Under what circumstances can a Court, while convicting an accused, order him to furnish security to keep the peace ? C.U. 1915 (b).

Under what circumstances can a Court,

While passing sentence on an accused person order him to execute a bond for keeping the peace ? C. U. 1919 (b).
Discuss some of the most important provisions of the Cr. P. C. for prevention of offences. C.U. 1921 (b).
Define the object and scope of Section 107 of the Code of Criminal Procedure.
A person tries to dissuade people from entering a liquor shop by word of mouth standing at the shop. In what special circumstances, in a case like this, can he be called upon to furnish security under section 107 ? C.U. 1922 (a)
When is a Magistrate of the first class while convicting an accused person of an offence, empowered to order him to execute a bond

(3) An order under this section may also be made by an Appellate Court including a Court hearing appeals under S. 407 or by the High Court when exercising its powers of revision. (S. 106).

B.—Security for keeping the peace in other Cases and security for Good Behaviour.

1. Security for keeping the peace in other cases.—(1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprenhended, are within the local limits of the Magistrate's jurisdiction.

(3) **Procedure of Magistrate not empowered to act under sub-section (1),**—When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peaceor disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under sub-section (3) may in his discretion detain such person in custody pending further action by himself under this Chapter. (S. 107.)

for keeping the peace ? C. U. 1913 (b). What circumstances would justify a Magistrate to require a person to show cause why he should not be ordered (*a*) to excute a bond for keeping the peace ; (b) to execute a bond with sureties for his good behaviour ? C. U. 1911 (a)

Note.—To constitute a proper foundation for an order requiring security, it is necessary that the Magistrate should adjudicate upon legal evidence before him that the person against whom it is made is likely to cause a breach of the peace and the Magistrate should give notice to the party, who is to be affected by the order, of the *particular conduct* on his part which is complained of Further the information of the kind mentioned in the section must be clear and definite directly affecting the person against whom process is issued and should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet.

To justify an order under this section there should be evidence of some specific conduct on the part of the accused from which a reasonable and. immediate inference can be drawn that the accused is likely to commit a breach of the peace and it is only on information of this character that the Magistrate should initiate proceedings under the section. (21 P. R. 1888.)

An order under this section can only be passed if there is evidence that the person sought to be bound over was about to commit a breach of the peace and not otherwise. The Magistrate must satisfy that the breach of the peace to be prevented by the order is an impending one.

Clause (2) clearly shows that only a District Magistrate or Chief Presidency Magistrate can take action under this section either (1) if a person within the local limits of his jurisdiction is likely to commit a breach of the peace or (2) if a person living outside the local limits of his jurisdiction is likely to commit a breach of the peace within the local limits of his jurisdiction. "As the section stood, proceedings could not be taken against a person outside the jurisdiction although he might be instigating a breach of the peace within the jurisdiction, but as such extended power requires careful exercise we have provided that the power of taking action in such cases shall only be exercised by a Chief Presidency or District Magistrate." (Sel. Com. Rep.)

But the other classes of Magistrates enumerated in the section cannot take proceedings under this section against a person who is not within the local limits of the jurisdiction. In such a case the proper course for those Magistrates, where they believe that certain persons residing beyond the limits of their jurisdiction are likely to commit a breach of the peace within their jurisdiction is to have information, supported by proper evidence of such fact, laid before a Magistrate having jurisdiction over such person, in order that proceedings may be taken by such Magistrate. (4 Cal. 737.)

It has, however, been held in 24 All. 151 and 31 Cal. 350 that if a District Magistrate has initiated proceedings unde S. 107 (2) against a person not at the time within the limits of his jurisdiction, he would be competent to transfer such proceedings under S. 192 to a subordinate Magistrate who would not have been competent to initiate the proceedings. The object of this section is to restrict the *initiation* only of proceedings against persons residing out of the jurisdiction of the District Magistrate, and not to restrict his power to transfer such proceedings, after initiation, to a subordinate Magistrate.

Under what circumstances can a Magistrate call upon a person to furnish security for his good behaviour? C.U. 1916(a). 1921 (suppl). When will a District Magistrate be justified in ordering a person to execute a bond of good behaviour on proof that he has disseminated any matter which has a tendency

2. Security for good behaviour from persons disseminating seditious matters —Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(a) any seditious matter, that is to say, any matter the publication of which is punishable under S. 124A of the Indian Penal Code or

(b) any matter the publication of which is punishable under S. 153A of the Indian Penal Code, or

(c) any matter concerning a Judge which amounts to criminal intimidation under the Indian Penal Code.

such Magistrate if in his opinion there is sufficient ground for proceeding may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

to excite disaffection towards the Govt. established by law in Bt. India? C. U. 1928(a).

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, with reference to any matter contained in such publication except by the order or under the authority of the Governor General in Council or the Local Government or some officer empowered by the Governor General in Council in this behalf. (S. 108).

3. Security for good behaviour from vagrants and suspected persons.—Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or,

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix. (S. 109).

4. Security for good behaviour from habitual offenders.—Whenever a Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this

What powers has a Magistrate to take security for

good behaviour from a habitual offender? C. U. 1910 (a).

behalf by the Local Government receives information that any person within the local limits of his jurisdiction—

(*a*) is by habit a robber, house-breaker, thief or forger or,

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or,

(d) habitually commits or attempts to commit or abets the commission of, the offence of kidnapping, abduction, extortion or cheating or mischief or any offence punishable under Chapter XII of the Indian Penal Code or under S. 489-A, S. 489-B, S. 489-C, or S. 489-D of that Code or,

(*e*) habitually commits or attempts to commit, or abets the commission of, offence involving a breach of the peace, or.

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided. require such person to show cause why he should not be ordered to execute a bond, with sureties for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix. (S. 110).

Note.—The object of this section is to afford protection to the public against a repetition of crimes in which the safety of property is menaced. This section is intended for supression of habitual bad characters whom the Magistrate finds within his circle and about whom he has good cause to fear that they will commit serious harms.

A charge under cl. (*f*) cannot be proved by general reputation, but by definite evidence. The evidence of mere general repute is not sufficient to prove that a person is so desperate and dangerous a character that he cannot be allowed to remain at large but such a finding must be based on evidence of facts.

Difference between S. 106 and Ss. 107-110.—There is a good deal of difference in procedure between cases falling under S. 106 and those falling under S. 107-110 : for in the latter class of cases there must be credible information before the Magistrate and the person to be ordered to give security must be called before him, there must be a full enquiry, and then the Magistrate may pass an order requiring security ; but nothing like these is necessary in cases falling under S. 106 and the reason for this difference is obvious, for in cases under S. 106, the Magistrate has already convicted the accused of an offence involving a breach of the peace or an intention to commit the same on the evidence of witnesses examined in the presence of the accused who had the right of cross-examining them. But in cases fallings under Ss. 107-110 the accused is not before the Court when it receives the information against him and he must be, therefore, summoned to attend, an inquiry must be held and the evidence given against him must be recorded in his presence and must be tested by usual means.

5. Procedure in cases of, demanding security for keeping peace and for good behaviour,—When a Magistrate acting under S. 107, S 108, S. 109 or S. 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. (S. 112)

Describe shortly the procedure to be followed in a proceeding for asking security for good behaviour. C. U. 1925 (b).

6. Procedure in respect of person present in Court.—If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him. (S. 113).

7. Summons or warrant in case of person not so present.—If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court.

Provided that whenever it appears to such Magistrate upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest. (S. 114).

8. Copy of order under S. 112 to accompany summons or warrant.—Every summons or warrant issued under S. 114 shall be accompanied by a copy of the order made under S. 112 and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same. (S. 115).

9. Power to dispense with personal attendance—The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to a bond for keeping the peace, and may permit him to appear by a pleader. S. 116).

Note.—This section applies only to a case under S. 107 *supra*. It is not applicable to Ss. 108-110, *supra*.

10. Enquiry as to truth of information.—(1) When an order under S. 112 has been read or explained under S. 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under S. 114, the Magistrate shall proceed to enquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary.

Note.—Under this section a Magistrate is bound to inquire into the truths of the information, notwithstanding that accused consents to furnish security. The section is quite clear that evidence must be taken in support of the order even though the accused does not show cause against giving security.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in waraant-cases, except that no charge need be framed.

(3) Pending the completion of the enquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under S. 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour, until the conclusion of the inquiry and may detain him in custody until such bond is executed or in default of execution, until the inquiry is concluded.

Provided that—

(*a*) no person against whom proceedings are not being taken under S. 108, S. 109, or S. 110, shall be directed to execute a bond for maintaining good behaviour and

(*b*) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under S. 112.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just. (S. 117).

Note.—It is only in the case of a person who is a habitual offender and is called upon to furnish security for good behaviour, that the fact of his being a habitual offender may be proved by evidence of general repute. This cannot be done in a case where a person is called upon to furnish security to keep the peace.

In proceedings instituted against more persons than one it is, however, essential, for the prosecution to establish what each individual implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace. In holding such an enquiry it is improper to treat what is evidence against one of such persons as evidence against all, without discriminating between the cases of the various persons implicated. (9 All. 452.)

Appeal.—Any person ordered by a Magistrate other than a District or Presidency Magistrate, to give security *for good behaviour* may appeal to the District Magistrate. (S. 406). There is no appeal from an order requiring security *for keeping the peace* , but the Chief Presidency or District Magistrate may, at any time, for sufficient reason to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his own. (See S. 124 *infra.*)

Object of the Section.—The object of this section is the *prevention* and not the punishment of crimes. A Magistrate in passing an order in terms of this section should not have a direct intention of punishing the person. The section is intended to prevent and not to punish a crime and with that object it authorises a Magistrate to take security. But it is solely for the purpose of securing good behaviour in future and it should not be used for punishing past offences.

11. Order to give security.—(1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided--

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under S. 112;

secondly. that the amount of every bond shall be fixed with the regard to the circumstances of the case and shall not be excessive;

thirdly, that, when the person in respect of whom inquiry is made is a minor, the bond shall be executed only by his sureties. (S. 118.)

What is the nature of the evidence which would justify a Magistrate to demand a bond with sureties for maintaining good behaviour? Will such evidence be sufficient for conviction of an offence? Give reason for your answer C U. 1911 (b).

Nature of evidence required.—In order to warrant an adjudication under this section it is essential that there should be judicial investigation and the order should be passed on legal evidence duly taken and recorded. An order passed under this section can only be supported when the procedure laid down by Ss. 107, 112 and the following sections have been duly observed. An order to execute a bond under this section cannot be made in the absence of any evidence; S. 118 as well as S. 117 prescribes enquiry and proof that it is necessary that the person charged should execute a bond. It is not sufficient that the Magistrate is morally satisfied as to the necessity for security. Although in an inquiry under S 117 the nature or quantum of evidence need not be so conclusive as is necessary in trials for offences, the Magistrate should not proceed purely upon an apprehension of a breach of the peace but is bound to see that substantial grounds for such an apprehension are established by facts against each person implicated, which would lead to the conclusion that an order for furnishing security is necessary. (9 All. 452.)

12. Discharge of person informed against.—If, on an inquiry under S. 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that

effect, and if such person is in custody only for the purposes of the inquiry shall release him, or, if such person is not in custody, shall discharge him (S. 119).

C.—Proceedings in all Cases subsequent to Order to furnish security.

1. Commencement of period for which security is required.—(1) If any person in respect of whom an order requiring security is made under S. 106 or S. 118, is, at the time such order is made, sentenced to, or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date. (S. 120).

2. Contents of bond.—The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond. (S. 121.)

3. Power to reject sureties.—A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered, and shall, in making the inquiry, record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a

Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him. (S. 122.)

4. Imprisonment in default of security.—(1) If any person ordered to give security under S. 106 or S. 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to the prison, or, if he is already in prison, detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) **Proceedings when to be laid before High Court or Court of session**—When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give security as aforesaid, issue a warrant, directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court ; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary may pass such order on the case as it thinks fit;

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(3A) If security has been required in the course of the same proceedings from two or more person in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2),

such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except, that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.

(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceeding.

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under S. 108 or S. 109, be simple and, where the proceedings have been taken under S. 110 be rigorous or simple as the Court or Magistrate in each case directs. (S. 123).

2. Power to release persons imprisoned for failing to give security. -(1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person inprisoned for failing to give security under this Chapter, may be released without hazard to the community or to any other person, he may order such person to be discharged,

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was orderd to give security has expired.

(4) The local Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired person.

A person remanded to prison under this sub section shall subject to the provisions of S. 112, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor. (S. 124).

3. Power of District Magistrate to cancel any bond for keeping the peace or good behaviour. The Chief Presidency or District Msgistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour

executed under this Chapter by order of any Court in his district not superior to his Court. (S. 125)

4. Discharge of sureties.—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit requiring the person for whom such surety is bound to appear or to be brought before him. (S. 126)

4A. Security for unexpired period of bond.— When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of S. 122 or under S. 126, sub-section (2), appears or is brought before him, the Magistrate shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of Ss. 121, 122, 123, and 124, be deemed to be an order made under S. 106 or S. 118, as the case may be (S. 126A.)

CHAPTER IX—UNLAWFUL ASSEMBLIES. (Ss. 127-132)

Assembly to disperse on command of Magistrate or police-officer.

1. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly of five or more persons to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town of Calcutta (S. 127).

Use of civil force to disperse.

2. If, upon being so commanded, any such assembly does not disperse or if without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency towrs, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in His Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869 and acting

as such, for the purpose of dispersing such assembly and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law. (S. 128.)

Use of military force.

3. If any such assembly cannot be otherwise dispersed and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force (S. 129.)

Duty of officer commanding troops required by Magistrate to disperse assembly.

4. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in His Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869 to disperse such assembly by military force, and to arrest and confine such person forming part of it as the Magistrate may direct or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting such persons. (S. 130).

Power of commissioned military officer to disperse assembly.

5. When the public security is manifestly endangered by any such assembly and when no Magistrate can be communicated with, any commissioned officer of His Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law, but if while he is acting under this section it becomes practicable for him to communicate with a Magistrate, he shall do so and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action. (S. 131).

6. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any criminal Court except with the sanction of the Local Government ; and—

Protection against prosecution for acts done under this Chapter.

(*a*) no Magistrate or police-officer acting under this chapter in good faith,

(*b*) no officer acting under S. 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under S. 128 or S. 130, and

(*d*) no inferior officer or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence:

Provided that no such prosecution shall be instituted in any criminal Court against any officer or soldier in his Majesty's Army except with the sanction of the Governor General in Council (S. 132).

CHAPTER X.—PUBLIC NUISANCES. (Ss. 133-143.)

Under what circumstances can a Magistrate take action for the removal of a public nuisance and what Magistrates are competent to take such action? C. U. 1917 (a).

1. Conditional order for removal of nuisance.

(1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

a) that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place or

b) that the conduct of any trade or occupation or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated or

Describe shortly the procedure of Criminal Court for the removal of public nuisances which are not of an urgent character. C. U. 1925 (a).

c) that the construction of any building or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

Describe shortly the procedure to be allowed for removal of a public nuisance C. U. 1925 (b).

e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling

such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on or to remove or regulate in such manner as may be directed such trade or occupation; or

to remove such goods or merchandise or to regulate the keeping thereof in such manner as may be directed or

to prevent or stop the erection of, or to remove, repair or support such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation—A "public-place" includes also property belonging to the State camping grounds and ground left unoccupied for sanitary or recreative purposes (S. 133).

Note.—Presidency Magistrates are not empowered to act under this Chapter. In nuisance cases, they can act under the Penal Code, the Police Acts, the Municipal Acts and other local enactments dealing with special kinds of nuisance.

Before making a conditional order under this section the Magistrate is not bound to take evidence; but he should do so before making the order absolute.

This section does not apply to the violation of *private* rights, but only to public nuisance. The obstruction of a

private path is not a nuisance within the meaning of this section.

It must be noted that the order passed by a Magistrate under this section must be a *conditional* order, an order either to remove the obstruction, etc. or to appear before him and move to have the order set aside or modified. No unconditional or absolute order can be made under this section. But in cases of an urgent nature coming under S. 144, the Magistrate may at once pass an *exparte* order,

Public nuisance.—For definition of "public nuisance" see S. 269 I. P. C.

Difference between S. 133 and S. 144.—The essential difference between an order under S. 133 and one under S. 144 is that S. 133 expressly directs that the injunctional order of the Magistrate should in cases to which that section applies be order *nisi* i.e., an order accompanied by a condition that it is not to operate, if the party show cause, within a specified time, why the order should not be obeyed ; while S. 144 speaks only of an absolute order. (10 W. R. Cr. 53.)

2. Service or notification of order.—(1) The order shall, if practicable be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person. (S. 134).

What courses are open to a person on whom a District Magistrate issues a conditional order requiring him to remove an obstruction from an alleged public way ? What is the first duty of the Magistrate

3. Person to whom order is addressed to obey or show cause or claim jury.—The person against whom such order is made, shall—

(*a*) perform, within the time and in the manner specified in the order, the act directed thereby ; or

(*b*) appear in accordance with such order and either show cause against the same or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper. (S. 135).

4. Consequence of his failing to do so.—If such person doos not perform such act or appear and show cause or apply for the appointment of a jury as required by S. 135, he shall be liable to the penalty prescribed in that behalf in S. 188 of the Indian Penal Code, and the order shall be made absolute. (S. 136).

when the person appears before him in answer to the said order ? C. U. 1927 (a).

5. Procedure where he appears to show cause. (1) If he appears and shows cause against the order the Magistrate shall take evidence in the matter as in a snmmons case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute. (S. 137).

When can a Magistrate pass an order absolute after a conditional order is served upon a party for removal of a nuisance? C. U. 1912 (b).

6. Procedure where he claims jury.—(1) On receiving an application under S. 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate. (S. 138).

Note.—This section is imperative in its terms, (13 C. W. N. 367) It leaves no discretion to the Magistrate and he is bound to appoint a jury when he is asked to do so. (2 Weir. 63). The jury appointed under this section are not a jury who hear the evidence in the Court but are simply persons selected by the parties to determine, in an informal way, whether the order of the Magistrate to remove an obstruction is reasonable or not. (10 C. W. N. 845).

7. Procedure where jury finds Magistrate's order to be reasonable—(1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter. (S. 139).

7A. Procedure where existence of public right is denied.—(1) Where an order is made under S. 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under S. 137 or S. 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence he shall proceed as laid down in S. 137 or S. 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under S. 138. (S. 139 A.)

8. Procedure on order being made absolute—(1) When an order has been made absolute under S. 136, S. 137 or S. 139, the Magistrate shall give notice of the same to the person against whom the order was made and shall further require him to perform the act directed by

the order within a time to be fixed in the notice, and inform him that in case of disobedience, he will be liable to the penalty provided by S. 188 of the Indian Penal Code.

Consequences of disobedience to order.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdisction the property te be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section. (S. 140).

9. Procedure on failure to appoint jury or commission to return verdict. - If the applicant by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by S. 140. (S. 141).

10. Injunction pending inquiry.– (1) If a Magistrate making an order under S. 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

Note.—An injunction under this section can be issued only when there is imminent danger or fear of injury of a serious kind to the public.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section. (S. 142).

11. Magistrate may prohibit repetition or continuance of public nuisance.—A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law. (S. 143).

Note.—For definition of "public nuisance" *see* S. 268 I. P. C. Infringement of an order made under this section is punishable under S. 291 I. P. C. but the order must be served on an individual personally and not by a proclamation addressed generally to the public at large (8 All. 99 ; 2 W. R. 32). Orders under this section are not proceedings within the meaning of S. 435 and are, therefore not open to revision. If any Magistrate not being empowered in this behalf makes an order under this section the proceedings are void. *Vide* S. 530. Cl. (h) *infra.*

Difference between Ss. 143 and 144—Sec. 143 enables a Magistrate to prevent the doing again or *continuing* of what is public nuisance, while under S. 144, he can prevent it *for the first time* (19 Mad. 464).

CHAPTER XI.—TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER. (S. 144.)

Give a short account of the provisions of the law empowering criminal courts either to make temporary orders in urgent cases of nuisance or apprehended danger

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.—(1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by S. 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.

or to deal with disputes relating to possession of immoveable property C. U. 1920 (a).

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

What powers has a Magistrate in cases of public nuisance in urgent cases? C. U. 1911 (a).

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

What is the procedure to be adopted by a Magistrate when passing temporary orders in urgent cases of nuisance or apprehended danger? C. U. 1900

(6) No order under this section shall remain in force for more than two months from the making thereof: unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs. (S. 144).

Note.—The power conferred upon a Magistrate by this section is an extraordinary power and the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. The secion is inten-

What are the remedies under the Criminal Procedure Code in urgent cases of nuisance or apprehended danger? C. U. 1905.

ded to provide for cases where a speedy remedy is desirable and where the procedure laid down in S. 133 is ineffective. Before taking action under S. 144 the Magistrate should be of opinion that immediate prevention or speedy remedy is necessary and he should state in the order the materials upon which his opinion is bassed (32 Cal. 935.)

A zaminder holds a daily market on his own land in close proximity to another old existing daily market with the result that there is a great tension of feeling between his men and the men of the other market such as is likely to lead to an imminent breach of the peace. What are the courses open to a Magistrate of the 1st class to take in such a case? Give reasons for your answer. C. U. 1925(b) [See also S.107 *supra*]

The law, in sanctioning the power under this section is careful to provide that it shall be committed only to Magistrates whose discretion is presumably guaranteed by their responsible position or by selection. (6 Mad. 203 at p. 222) If any Magistrate not being empowered by law in this behalf, issues an order under this section his proceedings are void. [*See* S 530 cl. (i) *infra.*] In disputes about possession of land, proceedings may, according to the Madras view, be instituted under this section if there is an apprehension of imminent breach of the peace. (3 Mad. 354; 26 Mad. 471). But according to the Calcutta and Patna views when possession is in dispute, proceedings must be taken under S. 145. (11 C. W N. 271; 3 Pat. L. J. 243, 287; 27 Cal. 785). An order cannot be passed under this section in a matter dealt with under S. 133. (Weir II. 58). No order under this section should be passed in the absence of emergency. An order passed when there is no emergency is without jurisdiction. (5 Cal. 7; 38 Mad. 489). If the order does not on the face of it show the emergency which rendered it necessary, it is bad in law. The duration of the authority in the Magistrate to interfere with private rights of parties is co-extensive with the emergency that justified the exercise of that authority. He cannot issue orders intending to have effect for all time (5 Cal. 7 : 8 Cal. 580 : 34 Cal. 897 : 10 All. 115 : 2 Mad. 140). The object of this section is to enable a Magistrate, in case of emergency, to make an immediate order for the purpose of preventing an imminent breach of the peace etc. but it is not intended to relieve him of the duty of making an enquiry into the circumstances which make it likely that such breach of the peace etc., will occur. It is, therefore, incumbent on him to limit the operation of the order to such reasonable time as may be necessary

to enable him to hold a sufficient enquiry, and if necessary to deal with the case under this section. If no immediate danger is apprehended the Magistrate should proceed under S. 133 and not under this section. An order under this section is justifiable only if the direction is likely to prevent (*a*) obstruction, annoyance or injury to any person lawfully employed, (*b*) danger to human life, health or safety, (*c*) a disturbance of the public tranquillity or a riot or an affray. So a Magistrate has no jurisdiction to make an order under this section merely for the protection of property, for preventing loss to another or for preventing reaping of crops till payment of rent. The order must be in writing, specific and definite in its terms and must show material facts necessitating the action. The application of the section is confined to the particular act from which danger is apprehended and does not authorise an order prohibiting a course of conduct or an occupation involving a series of acts done at certain intervals and spread over a period of time (Weir II 87). The party against whom an order is made under this section should have an opportunity to show cause against it (10 W. R. 53). A Magistrate purporting to act under this section has no business to adjudicate upon rights and has no jurisdiction to decide upon any question of title or possession. His only duty is to make an order with the object of preventing a breach of the peace imminent. (11 M. L. J. 122 ; Weir II, 98). He cannot usurp the functions of a civil court or interfere with execution of a decree obtained in a civil court. A Magistrate cannot by passing successive orders under this section extend the operation of an order indirectly beyond the time allowed by sub-sec. (6). (11 C. W. N. 79). If it is considered probable that danger to the public peace may remain after the expiry of two months from the date of the order under S. 144, steps should be taken in due course to obtain an order of Govt. under Cl. (6) or recourse should be had to the provisions of Chapter XXI or S. 107.

The High Court has no power to revise under S. 485, orders properly made under this section but orders under this sec-

tion can be revised if they are not within the scope of the section or is illegal or made without jurisdiction. The mere non-specification of the duration of the order does not vitiate the order : under sub-sec. (6) it will be presumed, in the absence of anything to the contrary in the order itself, that its duration is limited to the full period of 2 months. (34 Cal. 897).

CHAPTER XII.—DISPUTES AS TO IMMOVEABLE PROPERTY. (Ss. 145-148).

Briefly discuss the provisions of the law dealing with prevention of offence relating to disputes as to immoveable property. C. U. 1918 (b).

Describe the procedure to be adopted under the Cr. P. C. in case of dispute concerning any land or water or the boundaries thereof likely to cause a breach of the peace. C. U. 1905.

1. Procedure where dispute concerning land, etc. is likely to cause breach of peace.—(1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police-report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

When can a Criminal Court deal with disputes

(4) Inquiry as to possession.—The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence,

take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any (and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed ; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) Party in possession to retain possession until legally evicted.—If the Magistrate decides that one of the parties was or should under the first proviso to sub-sec (4) be treated as being in such possession of the subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4) may restore to possession the party forcibly and wrongfully dispossessed.

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claming to be representatives of the deceased party shall be made parties thereto :

as to immovable property ? When dealing with such cases, what has the Criminal Court to do ? C. U. 1915 (a).

Chapter XII of the Criminal Procedure Code treats of "Disputes as to immovable property." What does the expression "immovable property" connote here ? Write explanatory notes on the powers of a Magistrate in reference to such "Disputes as to immovable property." U. 1911 (a).

How is a Magistrate to deal with cases of disputes as to immoveable property ? C. U. 1905. Can the High Court

interfere with an order passed by a District Magistrate under S. 145 of the Criminal Procedure Code, relating to disputes as to immovable property? Give shortly your reasons. C. U. 1910 (b). When can a Magistrate take action to prevent disputes regarding immovable property? What Magistrates are competent to take such action? C. U. 1917 (a). What is the procedure to be followed by a Magistrate in a case when he receives information about a dispute concerning possession of land or water which is likely to lead to a breach of the peace? Answer the question with reference to

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds, thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under S. 107 (S. 145).

Note.—The object of this chapter is to prevent breaches of the peace pending settlement of the rights of the parties in a Civil Court. The Magistrate's jurisdiction is auxiliary in a way to that of the Civil Courts, and in fact is *quasi*-civil.

The object of S. 145 is to bring to an end by a summary process disputes relating to land etc. which are in their nature, likely, if not suppressed, to end in breaches of the peace. The only question the Magistrate has to decide is, who is in *actual possession* of the land. (35 Cal. 795 : 27 Cal. 918 ; 17 C. W. N. 944). The order of a Magistrate under S. 145 is meant to be only a temporary or tentative order and it is to be operative so long only as the rights of the parties are not determined by civil court. (29 Cal. 208, 26 cal. 625.) It decides no question of title (39 Cal. 187). Any order under this section ceases to have effect when the party aggrieved by it obtains an order from the civil court declaring his rights against such order : (2 C. L. R. 62). When a civil court decree is passed, the right between the litigants is decided and there is no more place for a summary order which proceeds not upon title but upon mere possession (16 W. R. 24 W. R. 17). The duty of a criminal court when proceeding under S. 145 where there is a decree of a civil court for possession in respect of the disputed land, is to find

which party held such civil court decree and then to maintain that party in possesion (5 C. W. N. 503).

But every previous decree of a civil court is not necessarily conclusive upon the question of possession in a proceeding under this section. To bar a proceeding under this section the decree must be clear, unambiguous, recent and between the same parties* and the question of possession must have been directly in issue in the previous suit. The question of possession under this section has to the determined with reference to the date of the order under sub-section (1). The proviso to cl. (4) merely recites a circumstance, under which the presumption of possession may be made in favour of one of the disputants. It does not debar the Magistrate from deciding the question of actual possession on other grounds also. (11 A. L. J. 305).

If a Magistrate not empowered by law in that behalf passes an order under this section his proceedings are void. *See* S. 530 (1).

Essentials.— A Magistrate would have no jurisdiction unless he was satisfied that there existed a dispute concerning land etc. and which dispute was likely to induce a breach of the peace. (7 Cal. 385 : 30 Cal. 155). An order under this section presupposes a dispute likely to cause a breach of the peace and in making it, a Magistrate may take action on the report of the Police or other information. The Magistrate must set out, in his order, the grounds upon which he was satisfied that there was a dispute likely to cause a breach of the peace (24 Bom. 527). An order under this section cannot be passed unless the Magistrate is of opinion that there is a likelihood of a breach of the peace. The essence and basis of the jurisdiction

*It has, however, been held in 5 C. W. N. 563 and 7 C. W. N. 118 that it is not necessary that the civil court decree should be between the same parties to proceedings under this section and that the Magistrate is bound to maintain a party in possession in accordance with the civil court decree, even when one of the parties to the proceedings before him was not a party to the decree.

the following points :—(a) What class of Magistrates can take action ? (b) What is the essential element which empowers the Magistrate to exercise jurisdiction ? (c) What has the Magistrate got to decide ? (d) What are the restrictions imposed by law upon the scope of the Magistrate's decision and (e) What final orders should the Magistrate pass ? C. U. 1924 (a).

Describe accurately the course of a proceeding under sec. 145 of the Cr. P. Code (disputes as to immoveable property). C.U 1914 (b).

Under what circumstances is a Magistrate empowered to take action in connection with disputes concerning immoveable

property? Can he interfere with a decree for possession obtained previously by one of the parties to the dispute? Give a short summary of the procedure to be followed by the Magistrate in such cases.
C. U. 21 (b).

under the present section depends upon there being a dispute *likely* to cause a breach of the peace. It is expressly stated in para (1) as a matter on which a Magistrate *must* be satisfied before he can take any action *at all* under the section and para (5) imperatively requires that a Magistrate shall, even after he has passed the order, cancel it, on its being shewn that no such dispute exists or has existed. (25 Bom. 179.) Where the materials before the Magistrate do not disclose the existence of such a dispute as is *likely* to result in *a breach of the peace*, the order made by him under S. 145 would be entirely void.

The essentials are (1) that there should be a dispute likely to cause a breach of the peace ; (2) that the dispute should concern "land or water" as interpreted in the section ; (3) that the dispute must be concerning "actual possession" ; and (4) that the subject of the dispute must be within the jurisdiction of the Magistrate. To institute valid proceedings under this section the procedure laid down herein should be strictly followed—that is (*a*) there must be a preliminary order as contemplated by sub-section (1) ; (*b*) the copy of the order must be served upon the parties and affixed to some conspicuous place at or near the subject of dispute ; and (*c*) all the parties interested in the land must be heard and evidence taken. (7 P. R. 1907).

Discuss shortly the principle laid down in Khosh Mahmud *v* Nazir Mahmud.
C. U. 1926 (b), 1927 (b), 1929 (a).

An initial order made by a Magistrate under S. 145 (1), Cr. P. C. is not defective because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the Police report on which the order is founded and to which it makes reference. (*Khosh Mahomed* v. *Nazir Mahomed*, 33 Cal. 352 F. B.) "The view that a reference by a Magistrate in the initial order to a police report, which clearly sets out the probability of a breach of the peace, is a sufficient statement of the reasons of his being satisfied of the existence of a dispute likely to cause a breach of the peace is more reasonable. We are inclined to hold that, in determining whether a particular initial order is defective or not, we ought to

look to its substance rather than to its form; and although a reference to any other document ought not to be necessary to ascertain the grounds upon which the Magistrate has proceeded, yet it does not follow that the Police report ought not to be taken as part of the proceeding and by reference incorporated in it. No doubt if the Police report itself does not disclose any ground for holding that there is a likelihood of a breach of the peace, the position would be different. But where.........the Police report sets out sufficient grounds and is expressly referred to in the initial order by the Magistrate, we would hold that such order sufficiently fulfils the requirements of the law" (*Per* Rampini & Mukherjee JJ. in 33 Cal. at pp. 355-56).

When can a Magistrate take action in case of dispute concerning immoveable property? Give a brief synopsis of the procedure to be adopted in such cases. C. U. 1918(a), 1921 (a).

When can a Magistrate take action with respect to a dispute relating to possession of land? How should he proceed in such a case? What should he decide and what is the nature of the final order that he should pass? C. U. 1923 (a).

Describe shortly the procedure of Cr. Courts for deciding disputes as to possession of immoveable property.

Parties.—The words "parties concerned" do not necessarily mean only the parties who are disputing, but include also persons who are interested in or claim a right to the property in dispute (27 Cal. 842; 32 Cal. 889). "Parties concerned in such dispute" are not limited to the parties actually concerned in the dispute but include parties concerned in the subject matter of the dispute who would be affected by the Magistrate's order declaring possession (21 Cal. 29; 26 Cal. 188 : 4 C. W. N. 613). The section contemplates one proceeding against all the parties known to be concerned in the dispute, so as to conclude the matter definitely and finally so far as the criminal courts are concerned (27 Cal. 892; 11 Bom. L. R. 37; 4 C. W. N. 753). But it is not necessary that all persons interested in or claming a mere *right to possession* of the property should be made parties (30 Cal. 155).

"Land or Water."—See cl. (2). The definition of "land" as including "crops" or "the produce" is for the purpose of this section only. "Crop" in this section is restricted to something the produce of the soil. Lac is neither "a crop" nor "land" within the meaning of this section. Where the dispute in respect of which proceedings were drawn up under this section is one between landlord and tenants regarding the right to grow and collect lac on plum trees standing on

C. U. 1925 (a) State the facts and principles involved in Ali Maham-Mad Mandal v. Piggot, 32 C. L. J 270. C. U. 1924 (b), 1924 (a), 1923 (b). On receipt of a Police-report that there is a dispute between A and B likely to cause a breach of the peace concerning a piece of land, the S. D. O. by an order, calls upon A and B to prove their respective claims as regards the fact of actual possession of the subject of dispute. Evidence adduced by the parties show that on the date of the Magistrate's order, B was in possession after having forcibly and wrongfully dispossessed A from the land three weeks before the Magistrate's order. What order should the Magis-

lands comprised in the holdings of the tenants, it being not one in respect of any "land or water" within the meaning of this section, the Magistrate has no jurisdiction to proceed under this section and make an order for attachment of trees with lac thereon. (*Ali Muhammad* v. *Piggot*, 32 C. L. J. 255).

Revision:—Before the recent amendment of the Code by Act XVIII 1923 proceedings under this chapter and Secs. 143 144 and 176 were by S. 435, cl. (3) expressly excluded from the class of proceedings liable to be dealt with on revision. But now, since the amendment of S. 435 by the omission of cl. (3), the order under Ss. 143, 144 and 176 and Chapter XII can be revised. (Even before the amendment, the High Courts could interfere under S. 107 of the Government of India Act. *See* 30 Cal. 155). In *Ali Muhammed* v. *Piggot* (32 C. L. J. 270) it has been *held* that the doctrine of inherent power of Court is applicable in criminal cases. The High Court is competent, in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act, 1915, to set aside proceedings instituted without jurisdiction by a subordinate Court under S. 145 Cr. P. C.; such power of superintendence can be exercised notwithstanding S. 435 (3) of the Cr. P. C. Code. The High Court may also make consequential or incidental orders in the exercise of its powers of superintendence over subordinate Courts. The High Court has inherent power to give directions as to the disposal of property which was attached and has been dealt with by a subordinate Court in the course of proceedings instituted without jurisdiction under S. 145 of the Cr. P. C. Code. In the above case, proceedings under S. 145 Cr. P. C. were instituted on the ground that a dispute likely to cause a breach of the peace existed between landlord and tenants relating to the right to grow and collect lac on plum trees standing on lands comprised in the holdings of the tenants. The District Magistrate attached the disputed trees with lac thereon, pending decisions. At a later stage by order of the District Magistrate, the lac was collected and stored in the godowns of the landlord and a portion thereof was sol

by auction. The Magistrate was held to have no jurisdiction to take action under S. 145 or to make the order he has passed (See 32 C. L. J. 255 *ante*). *Held* also that the lac and the sale proceeds of the portion already sold, after deduction of incidental charges, should be kept in the custody of the court pending decision by the civil court on the question of title to the lac.

trate pass in these circumstances and why? Would it make any difference if such dispossession of A by B took place three months before the Magistrate's order? Give reasons for your answer. C. U. 1928 (b)

Form of final order under Sec. 145.—The following is the form of the final order under sub-sec. (6) :—

"It appearing to me on the grounds duly recorded, that a dispute likely to induce a breach of the peace, existed between (*describe the parties by name and residence or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*), situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respectives claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true :

When can a criminal court deal with disputes relating to immoveable property? What is the court to do in such cases? C. U. 1926 (b).

I do decide and declare that he is (or they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this

day of 19

(*Seal.*) *Signature.**

2. Power to attach subject of dispute.—(1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it until a competent

*A Magistrate should sign his name in full to a judicial order under this section and should also note his official position. (12 C. W. N. 761.)

Court has determined the rights of the parties thereto or the person entitled to possession thereof.

Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no Receiver of the property, the subject of dispute, has been appointed by any Civil Court, appoint a Receiver thereof who, subject to the control of the Magistrate, shall have all the powers of a Receiver appointed under the Code of Civil Procedure.

Provided that in the event of a Receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the Receiver appointed by the Magistrate who shall thereupon be discharged. (S. 146).

Note.—This section is a corollary to S. 145, so the order under this section cannot stand if the proceedings under S. 145 are illegal (4 Cal. 105). The section does not apply when there is no doubt as to actual possession or when both the contending parties are in possession. An order of attachment under this section binds only persons who are parties in proceedings under S. 145. It does not bind third parties. (3 C. W. N. 359).

3. **Disputes concerning rights of use of immoveable property etc.**—(1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in S. 145, sub-section (2) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the ground of his being satisfied and requiring the parties concerned in such dispute to attend the Court

in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in S. 145 and the provisions of that section shall, as far as may be, applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right.

Provided that, no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction. (S. 147).

4. **Local inquiry.**—(1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) **Order as to costs.**—When any costs have been incurred by any party to a proceeding under this Chapter, the Magistrate passing a decision under S. 145, S. 146 or S. 147 may direct by whom such costs shall be paid whether by such party or by any other party to the proceeding, and whether in whole or in part

or proportion. Such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable. (S. 148).

CHAPTER XIII. PREVENTIVE ACTION OF THE POLICE (Ss. 149—153).

What are the provisions relating to preventive action of the police ? C. U. 1914 (b'. What power of preventive action is given to the Police by the Criminal Procedure Code ? C. U. 1902.

1. **Police to prevent cognizable offences.**—Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence. (S. 149).

2. **Information of design to commit such offences.**—Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence. S. (150).

2. **Arrest to prevent such offences.**—A police-officer knowing of a design to commit any cognizable offence may arrest without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented. (S. 151).

4. **Prevention of injury to public property.**—A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark or buoy or other mark used for navigation. (S. 152).

5. **Inspection of weights and measures.**—(1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station, for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may

seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction. (S. 153).

PART V—Information to the police and their power to investigate. (Ss. 154-176).

CHAPTER XIV.

Information in cognizable cases.

1. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf. (S. 154).

Information in non-cognizable cases.

2. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.* (S. 155).

Investigation into cognizable cases. How should an officer in charge of a Police Station act when he receives information of the commission of a non-cognizable offence? Can he under any circumstance investigate such an offence? C. U. 1915 (b).

3. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under S. 190 may order such an investigation as above-mentioned. (S. 156).

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* This section so far as it applies to the police in the town of Bombay, is repealed by S. 2 (1) and Schedule A to the City of Bombay Police Act, 1902 (Bom. Act, IV of 1902), Bom. Code.

Procedure where cognizable offence suspected.

4. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under S. 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Local Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender.

Provided as follows :—

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;

Where police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (*a*) and (*b*) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section and, in the case mentioned in clause (*b*) such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated. (S. 157).

Reports under S. 157 how submitted.

5. (1) Every report sent to a Magistrate under S. 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate. (S. 158.)

Power to hold investigation or preliminary inquiry.

6. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code. (S. 159).

Police-officer's power to require attendance of

7. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information

given or otherwise, appears to be acquainted with the circumstances of the case ; and such persons shall attend as so required. (S. 160).

witnesses.

Examination of witnesses by police.

8. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such persons shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. (S. 161).

Statements to police not to be signed ; use of such statements in evidence.

9. (1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the persons making it ; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record be used for any purpose save as hereinafter provided at any inquiry or trial in respect of any offence under investigation at the time when such statement was made ;

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by S. 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of S. 32, Cl. (1) of the Indian Evidence Act, 1872. (S. 162.)

No inducement to be offered.

10. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act. 1872, S. 24.

(2) But no police-officer or other person shall prevent by any caution or otherwise any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will (S. 163).

Power to record statements and confessions.

11. (1) Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police-officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the enquiry or trial,

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confession shall be recorded and signed in the manner provided in S. 364, and such statements or confession shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless upon questioning the person making it, he has reason to believe that it was made voluntarily ; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect --

"I have explained to (name) that he is not bound to make a confession and that if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(*Signed*) *A. B.*

Magistrate.

Explanation—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case (S. 164).

[**Note**—A confession under S. 164 Cr. P. C. must be made either in the course of an investigation under Chapter XIV or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the enquiry or trial is only imposed when the investigation has ceased and not when it is made in the course of the Police investigation. Where a number of persons were arrested on the 1st May

and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confesssion taken while the police investigation was then actually going on, and on the 17th an order under S. 196 was obtained and the police report sent in and on the next day the examination of the prosecution witness began: *Held* that the Magistrate did not take cognizance under S. 190 of the Code nor did the inquiry commence on the 4th and the confession were taken in the course of an investigation under Ch. XIV.

State briefly the principles laid down in *Barindra Kumar Ghosh* v. *Emperor*, 37 Cal. 467. C. U. 1927 (b) [Sec. Analysis of Leading Cases]

The fact that the Magistrate who has taken the confessions afterwards holds the enquiry, does not, under S. 164, constitute the recording of the confession an examination of the accused in the course of it and at its commencement. S. 164 includes confessions taken by a Magistrate who afterwards holds such enquiry or trial. (*Barindra* v. *Emperor*, 37 Cal. 467)].

Search by police-officers.

12. (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer and order in writing, specifying the place to be searched and, so far as possible, the thing for which search is to be made and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in S. 102 and S. 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the

owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate ;

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost (S. 165).

When officer in charge of police station may require another to issue search warrant.

13. (1) An officer in charge of a police-station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of S. 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of S. 165, as if such place were within the limits of his own station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under S. 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in S. 165, sub-secs. (1) and (3).

(5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4) :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost (S. 166).

Procedure when investigation cannot be completed in twenty-four hours.

14. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by S. 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation, if he is not below the rank of sub inspector, shall forthwith transmit to the nearest Magistrate a copy of the

entries in the diary hereinafter prescribed relating to the case and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Local Government shall authorise detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or sub-divisional Magistrate, he shall forward a copy of his order, with the reasons for making it, to the Magistrate to whom he is immediately subordinate (S. 167).

Report of investigation by subordinate police-officer.

15. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station (S. 168).

Release of accused when evidence deficient.

If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. (S. 169).

Case to be sent to Magistrate when evidence is sufficient.

17. (1) If, upon an investigation under this Chapter it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day

fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report. (S. 170.)

Complainants and witnesses not to be required to accompany police-officer or subjected to restraint.

18. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Rocusant complainant or witness may be forwarded in custody.

Provided that if any complainant or witness refuses to attend or to execute a bond as directed in S. 170, the officer in charge of the police-station may forward him in custody to the Magistrate who may detain him in custody until he executes such bond, or until the hearing of the case is completed. (S. 171).

Diary of proceedings in investigation

19. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any criminal Court may send for the police-diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents

shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act. 1872, S. 161 or S. 145, as the case may be, shall apply. (S. 172).

20. (1) Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall—

Report of police-officer.

(a) forward to a Magistrate, empowered to take cognizance of the offence on a police-report, a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under S. 158, the report shall, in any cases in which the Local Government by general or special order so directs be submitted though that officer and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial;

Provided that the same shall be paid for unless the Magistrate for some special reasons thinks fit to furnish it free of cost. (S. 173).

Police to inquire and report on suicide, etc.

21. (1) The officer in charge of police-station or some other police-officer specially empowered by the Local Government in that behalf, on receiving information that a person—

(a) has committed suicide or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury, as may be found on the body, and stating in what manner, or by what weapon or instrument if any, such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) Where there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay investigations under this section may be made by the head of the village who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class and any Magistrate especially empowered in this behalf by the Local Government or the District Magistrate. (S. 174)

Power to summon persons.

22. (1) A police-officer proceeding under S. 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which S. 170 applies, such person shall not be required by the police-officer to attend a Magistrate's Court. (S. 175).

23. (1) When any person dies while in the custody of the police the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in S. 174, clauses (*a*) (*b*) and (*c*) of sub-sec. (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer and if he does so he shall have all the powers [illegible] nducting it which he would have in holding an inqu[illegible] an offence. The Magistrate holding such an inqui[illegible] record the evidence taken by him in connection there[illegible]h in any of the manner hereinafter prescribed according [illegible] the circumstances of the case.

Inquiry by Magistrate into cause of death.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred in order to discover the cause of his death the Magistrate may cause the body to be disinterred and examined. (S. 176).

Power to disinter corpses,

PART VI—Proceedings in Prosecutions: (Ss. 177—403).

CHAPTER X.—JURISDICTION OF CRIMINAL COURTS IN INQUIRIES AND TRIALS. (Ss. 177—199A).

A.—Place of inquiry or Trial.

1. **Ordinary place of inquiry and trial.**—Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. (S. 177).

State the rules laid down in the Code of Criminal Procedure for the purpose of determining the place of inquiry or trial of an accused person. C. U. 1907

2. **Power to order cases to be tried in different sessions divisions**—Notwithstanding anything contained in S. 177, the Local Goverment may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division: Provided that such direction is not repugnant to any direction previously issued by the High Court under S. 15 of the Indian High Courts Act, 1861, or S. 107 of the Government of India Act, 1915 or under this Code, S. 526. (S. 178).

3. Accused triable in district where act is done or where consequence ensues.—When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. (S. 179).

A wounds B at Berhampur. B is removed to Calcutta for treatment and dies in a hospital there. A is put on his trial at Calcutta for murdering B. Discuss the legality of the procedure. C. U. 1916 (b)

A tells B in Calcutta that unless B gives him Rs. 1,000 at Suri he will kill B. B takes A to Suri and gives the amounts to A Where should A be tried and why? C. U. 1927 (a).

Illustrations.—(*a*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z. (b) A is wounded within the local limits of the jurisdiction of Court X and is during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the juridiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z. (*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y. (*d*) A is wounded in the Native State of Baroda and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

4. Place of trial where act is offence by reason of relation to other offence.—When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done. (S. 180).

What are the provisions of the Cr. P. C. relating to

Illustrations—(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed or by the

Court within the local limits of whose jurisdiction the offence abetted was committed. (*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained. (*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

the place of enquiry into, or trial of, an alleged offence of criminal misappropriation criminal breach of trust, stealing, kidnapping and abduction ? C. U. 1901.

5. **Being a thug or belonging to a gang of dacoits escape from custody, etc.**—(1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

A instigates B in Calcutta to kill C at Dinajpur. B goes to Dinajpur and kills C. Where should A be tried and why ? C. U. 1927 (a).

(2) **Criminal misappropriation and criminal breach of trust.**—The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) **Theft.**—The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.

A steals some jewellery in Delhi and sells them to a jeweller in Calcutta at a low price. Where should each of them be tried ? Can they be tried together ? Give reasons for your answer. C. U. 1919 (a).

(4) **Kidnapping and Abduction.**—The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained. (S. 181).

A while travelling by train from Howrah to Burdwan was robbed on the way

by a fellow-passenger B. Can B be tried by the District Magistrate of Howrah? Supposing there is some doubt as to where the trial is to take place, who is to decide the question of jurisdiction? Would the trial at a wrong place vitiate the proceedings? C.U. 1921 (b). At what different places may the offences of Dacoity with murder and Abduction be tried? C.U. 1926 (a). Where an offender may be tried when the offence is committed by him in the course of performing a journey or voyage? C. U. 1926 (a) What offences may be tried in a Presidency town irrespective of the fact of the commission thereof within such town or not? C. U. 1926 (a).

6. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.—When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas. (S. 182).

7. Offence committed on a journey.—An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage. (S. 183).

8. Offences against Railway, Telegraph, Post office and Arms Acts.—All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town. (S. 184).

9. High Court to decide, in case of doubt, district, where inquiry or trial shall take place.—(1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits

of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court upon the matter having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued. (S. 185).

A is placed on his trial before a Deputy Magistrate at Barisal on a charge of theft. Doubt arises as to whether the offence was committed within the jurisdiction of Barisal or Khulna. Where should A be tried and why? C. U. 1927 (a). Where should A be tried in the following cases & why:—(*a*) B, at Dacca, Kidnaps X whom A wrongfully conceals in Calcutta. (*b*) A commits rioting on a *chur*. It is uncertain whether the *chur*. appertains to the district of Khulna or to the district of Backhergang. (*c*) A while travelling by train from Goalunda to Sealdah picks the pocket of of a fellow passenger in the train. (*d*) A, belonging to a gang of dacoits at

10. **Power to issue summons or warrant for offence committed beyond local jurisdiction.**—(1) When a Presidency Magistrate, a District Magistrate, a Subdivisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of Ss. 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinafter provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court. (S. 186).

11. **Procedure where warrant issued by subordinate Magistrate.**—(1) If the person has been arrested under a warrant issued under S. 186 by a

Khulna, is arrested in Calcutta. C. U. 1929 (a) (e) X entrusts A with some money for a particular purpose at Dacca. A comes to Calcutta & starts a business on his own account with the money & thereby commits criminal breach of trust. (f) B commits theft in Calcutta & goes to Hooghly where he gives stolen property to A who receives it knowing it to be stolen. (g) A stabs B in Calcutta. B is removed to the Howrah Hospital where he dies. (h) A after committing a dacoity at Faridpur, goes to and lives at Barisal where he is arrested. C. U. 1928 (b).

Magistrate other than a Presidency Magistrate, or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any criminal Court in the same district other than that of the Magistrate acting under S. 186, such Magistrate shall send such person to such Court. (S. 187).

12. **Liability of British subjects for offences committed out of British India.**—When a Native Indian subject of His Majesty commits an offence at any place without and beyonds the limits of British India, or

when any British Subjects commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the King (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in repect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that notwithstanding anything in any of the preceding sections of this Chapter, no charge as to any offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that in his opinion, the charge ought to be inquired into in British India ; and, where there is no Political Agent, the sanction of the Local Government shall be required :

Provided, also, that any proceedings taken against any person under this section, which would be a bar to

subsequent proceedings against such person for the same offence if such offence had been committed in British India, shall be a bar to further proceedings against him under the Indian Extradition Act, 1903, in respect of the same offence in any territory beyond the limits of British India. (S. 188).

13. **Power to direct copies of depositions and exhibits to be received in evidence.**— Whenever any such offence as is referred to in S. 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct the copies of depositions made or exhibits produced before the Political Agent or a judical officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate. (S. 189).

B.—Condition requisite for Initiation of proceedings.

What are the conditions requisite for the initiation of criminal proceedings? C. U. 1926 (a). What are the ways by which a Magistrate may take cognizance of an offence? C. U. 1923 (a). Can a Magistrate take cognizance of an offence upon private information? If he does so, what are the rights of the accused? C. U. 1910 (a).

1. **Cognizance of offences by Magistrates.**— (1) Except as hereinafter provided,* any presidency Magistrate, District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence ;

(*b*) upon a report in writing of such facts made by any police-officer ;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offience has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

* See for instance, Ss. 195—199, 480, 485.

When can a Magistrate take cognizance of an offence? Can he always try a case of which he has taken cognizance? C.U. 1911 (a).

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (*c*), of offences for which he may try or commit for trial. (S. 190).

What do your understand by the expression "Taking cognizance of an offence"? What are the restrictions imposed upon a Court in the matter of taking cognizance of an offence of criminal conspiracy? C.U. 1918 (b)

Complaint.—A complaint as defined in Sec. 4, Cr. P. C. is an allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some persons whether known or unknown, have committed an offence. Under S. 190 a Magistrate may take cognizance of an offence upon receiving a complaint of facts which constitutes such an offence. A complaint which does not set forth a tolerably full statement of the concrete facts which constitute the offence but merely copies out the words of the section describing the offence, is not a complaint of facts within the meaning of S. 190 Cr. P. C. But although the complaint is not in conformity with the requirements of S. 190 Cr. P. C., and although the accused might have possibly with success applied for quashing the proceedings *before* enquiry or trial, the conviction cannot be assailed on that ground. The defect, if any, is cured by S. 537 (*a*), Cr. P. C. (*Pulin Behary* v. *King Emperor*, 15 C. L. J. 517.)

In accordance with the general rule in criminai prosecutions, an indictment or information for conspiracy must contain a statement of the facts relied upon as constituting the offence in ordinary and concise language, with as much certainty as the nature of the case will admit. If the statute employs broad and comprehensive language descriptive of the general nature denounced, the complaint should embody a particular statement of the facts and circumstances. (*Ibid*, per Mukherjee, J.).

"Taking cognizance" does not of itself involve any formal action, or indeed action of any kind but occurs as soon as a Magistrate, as such, takes legal notice of, that is, applies his mind to the suspected commission of an offence with a view to decide whether he should take any such judicial action preliminary to inquiry as is hereinafter mentioned, such as recording the complaint, issuing or

refusing process or the ordering of a previous enquiry. (Woodroffe, 211). The expression "taking cognizance" has been defined as any judicial action permitted by the Code with a view to eventual prosecution preliminary to the commencement of the enquiry or trial under Ss. 207, 241 and 251, (Boys, 283).

2. Transfer or commitment on application of accused.—When a Magistrate takes cognizance of an offence under sub-section (1), clause (c) of the preceding section the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by any other Court, and if the accused, or any of the accused, if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate. (S. 191).

What Magistrates are competent to take cognizance of offences? What are the different modes in which cognisance of an offence may be taken? C.U. 1916(a).

Note.—The law in laying down the strict rule has regard not so much to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties. One important object at all events, is to clear away everything which might engender suspicion and distrust of the tribunal and so to promote the feeling of confidence in the administration of Justice, which is so essential to social order and security. (Per Meller and Lash JJ. in *Serjeant* v. *Dab.*)

What are the three different ways in which a Magistrate may take cognizance of offences? Of what offences and in what way can a Sessions Judge take cognizance? What difference is there between the powers of a Sessions Judge and those of an Assistant Sessions Judge in the matter of taking cognizance of offences and trials of offenders? C. U. 1920 (a)

The priciple of this section *viz.*, that no man ought to be a judge in his own case applies to proceedings under S. 110, though they are not offences. Thus, where a Magistrate has framed proceedings under S. 110, against a person mainly, if not wholly, on his own knowledge of the character of that person, the Magistrate is not a proper person to proceed under S. 117, with the trial by enquiring into the information upon which action has been taken, (29 Cal. 392). But in 27 All. 172 it has been held that the provisions of S. 190 and S. 191, do not apply to proceedings under S. 110, and that a Magistrate who has instituted proceedings against a person under S. 110 on information

received, need not inform him that he is entitled to have his case transferred to another Court.

A Magistrate taking congnizance of an offence under S. 190 (1) cl. (*c*) is bound to inform the accused of his right to have the case transferred. If he does not inform the accused of his right, or if, inspite of the objection taken by the accused, the Magistrate proceeds with the trial, the whole proceedings are void. The defect is not an irregularity that can be cured by S. 537 *infra*. But the mere fact that a Magistrate has taken cognizance of an offence under S. 190 (1) cl. (*c*) would not bar his jurisdiction to hear and determine the case; unless the accused exercises the privilege conferred by the section, the Magistrate's jurisdiction to institute, hear and determine the case, is unquestionable. (1893 A. W. N. 79).

3. **Transfer of cases by Magistrates.**—(1) Any Chief Presidency Magistrate, District Magistrate or Sub divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly. (S. 192).

When is a Magistrate disqualified to try a case? Illustrate your answer. C. U. 1911 (b)
Write a brief note on:— The power of a Court of Sessions to take cognizance of an offence.

4. **Cognizance of offences by Courts of Session.**—(1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

"Except.............provided."—For cases in which a Court of Session can take cognizance of offences committed before itself or under its own cognizance, without a commitment made by a competent Magistrate, *see* Ss. 351, 437, 478, 480 and 485 *infra*.

(2) Additional Session Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or as the Sessions Judge of the division, by general or special order, may make over to them for trial. (S. 193).

5. (1). **Cognizance of offences by High Court.** —The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the Indian High Courts Act, 1861, or the Government of India Act, 1915 or any provision of this Code.

(2) **Informations by Advocate General.**—(*a*) Notwithstanding anything in this Code contained, the Advocate General may, with the previous sanction of the Governor-General-in-Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which His Majesty's Attorney General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(*b*) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by His Majesty's Attorney General so far as the circumstances of the case and the practise and procedure of the said High Court will admit.

(*c*) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

(*d*) The High Court may make rules for carrying into effect the provisions of this section. (S. 194).

6. **Prosecution for contempt of lawful authority of public servants, for certain offences against public justice and for certain offences relating to documents given in evidence.**—(1) No Court shall take cognizance—

C.U.1916 (b) A Magistrate upon his own knowledge of the character of a party frames a proceeding against such a party under Sec 110 of the Cr. P. C. State the procedure the Magistrate should adopt in such a case. When is a Magistrate bound, before recording evidence, to inform the accused that he is entitled to have the case tried by another Court? Mention a hypothetical case to illustrate your answer. C. U. 1911 (b). What are the different modes in which a Magistrate can take cognizance of an offence? C. U. 1917 (a), 18 (a), 13 (a). Does any of them impose any restriction on the power of such Magistrate to try the offence subsequently? C.

U. 1917 (a). A witness gives false evidence in a Court of Justice. Indicate the steps that should be taken to bring him to trial.
C.U. 1910 (a). May a superior court (i) set aside a complaint duly made by a subordinte Court, (ii) revoke a sanction granted by it ?
C. U. 1909 A institutes a criminal case against B in the Court of a S. D O. who after taking cognizance transfers the case of the file of a Subordinate Magistrate The latter. after taking evidence, refuses to issue process and dismisses the complaint as unworthy of credit. Then on the application of B, the S. D. O. who took cognizance of the offence, makes a complaint against

(*a*) of any offence punishable under Ss. 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate :

(b) of any offence punishable under any of the following sections of the same Code, namely, Ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding of any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate ; or

(*c*) of any offence described in S. 463 or punishable under S. 471, S. 475 or S. 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (*b*) and (*c*) of sub-section (1) the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) For the purposes of this section a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or, in the case of Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(*a*) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(*b*) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to

the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1) with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (*a*) by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint. (S. 195).

Note.—Some important changes have been effected in this section by Act XVIII of 1923. Under the amended section the necessity of a sanction for the cognizance of certain offences enumerated in the section has been done away with. It is now obligatory upon a court taking cognizance of offences mentioned in S. 195 to do so only upon a complaint in writing of either the court before whom the offence is committed or the public servant concerned. The object of requiring a complaint in writing of the public officer or court instead of saction as previously is to protect private persons from being prosecuted by baseless prosecutions at the instance of private individuals, for offences connected with the administration of justice. Under the old law any sanction given or refused could be revoked or granted by any authority to which the authority giving or refusing it was subordinate. Now under sub-sec. (5), power to withdraw a complaint made by a subordinate public servant is given to the authority which is superior to it. For revocation or grant of complaint by appellate Court *see* Ss. 476A and 476B *infra*.

Under the present law sanction to prosecution being absolutely dispensed with, there is no room for any application by a private party under S. 195 but a private person can now prefer an application under S. 476 requesting a court to file a complaint (Sohoni, 441).

A for bringing a false charge against B. Discuss the legality of the complaint. C. U. 1927 (a). [Sub-divisional Magistrates are not subordinate to S. D. O. within the meaning of Sub-Sec. (3), for appeals from such Magistrates do not ordinarily lie to S. D. O. Sec. 407 *infra*.] A sues B for rent. B pleads payment and produces a receipt; the court finds the receipt to have been forged and decrees the claim in full. A then applies for sanction to prosecute B. to the successor of the Judge who had heard and disposed of the rent-suit. Can the new Judge grant sanction? If so, can he do it without notice to B

and without any preliminary enquiry? C.U 1911 (b). [Notice and preliminary enquiry not compulsory. Sec. S. 476 *infra*.]

The word "Court" does not mean the individual who holds the office. It is the Court, not the particular Judge constituting it, who complains. Therefore the words "such Court" include the successor to the post, for the change of incumbent does not alter the constitution of the Court. (Woodroffe 222).

Ss. 172-188. I. P. C.—Contempts of the lawful authority of public servants. S. 193—Giving or fabricating false evidence in a judicial proceeding or in any other case. S. 194—Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence, if an innocent person be thereby convicted and executed. S. 195—Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment for seven years or more. S. 196—Using in a judicial proceeding evidence known to be false or fabricated. S. 199—False statement made in any declaration which is by law receivable as evidence. S. 200—Using as true any such declaration known to be false. S. 205—False personation for the purpose of any act or proceeding in a suit or criminal prosecution or for becoming bail or security. S, 206—Fraudulent removal or concealment etc. of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence or in execuiion of a decree. S. 207—Claiming property without right or practising deception touching any right to it, to prevent its being taken as a forfeiture or in satisfaction of a fine under sentence or in execution of a decree. S. 208—Fraudulently suffering a decree to be passed for a sum not due or suffering decree to be executed after it has been satisfied. S. 209—False claim in a Court of Justice. S. 210—Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied. S. 211—False charge of offence made with intent to injure. S. 228—Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding. S. 463—Forgery. S. 471—Using as genuine a forged document. S. 475—Counter-

feiting a device or mark used for authenticating documents described in Sec. 467 I. P. C. or possessing counterfeit-marked material. S. 476—Counterfeiting a device or mark used for authenticating documents other than those described in S. 467 I. P. C. or possessing counterfeit-marked material.

7. **Prosecution for offences against the State.**—No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Indian Penal Code (except S. 127) or punishable under S. 108A, or S. 153A, or S. 294A or S. 295A or S. 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General-in-Council, the Local Government, or some officer empowered by the Governor-General-in-Council in this behalf. (S. 196).

Note—Chap. VI of the Penal Code deals with offences againt the State. S. 127, Indian Penal Code relates to receiving property taken by war against any Asiatic power in alliance or at peace with the Queen or by committing depredations on the territories of any such power. S. 108-A relates to abetment in British India of an offence outside the limits of British India. S. 153-A relates to promoting enmity between classes. S. 294-A relates to the keeping of lottery offices and publishing proposals rsgarding the same. S. 295-A deals with the offence of maliciously insulting the religion or the religious belief of any class. S. 505 relates to false statements, rumours etc. circulated with intent to cause mutiny or offence against the public peace. Chapter IX-A deals with offences relating to elections.

Where the sanction under S. 196 Cr. P. C. is granted by the *defacto* Local Govt. and the cognizance of the case is taken by the *defacto* Sessions Judge, it is not open to a party to question the legality of the conviction upon the allegation that the Local Govt. is irregularly constituted and the Sessions Judge irregularly appointed. The acts of one, who although not the *dejure* holder of a legal office, is actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the public in

his actions, cannot be collaterally impeached in any proceeding in which such person was not a party. (*Pulin Behary* v. *King Emperor*, 15 C. L. J. 517).

Where the persons to be prosecuted are named and the sections under which they are alleged to have committed offence as also the period of their activity are specified, the mere circumstance that those persons are not described as members of a revolutionary society, the existence whereof is sought to be established at the trial, does not affect the validity of the sanction (*Ibid*).

The Local Govt. cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the court of an offence mentioned in S. 196 Cr. P. C. and its judgment must be specifically directed to the particular section, and no other, under which the prosecution is to be carried on and the order or authority should be preceded by a deliberate determination in this respect. An order authorising a complaint under certain specified sections "*or under any other sections found applicable,*" if it means found by any other than Govt. invokes a delegation which cannot be sustained. Where an order under S. 196 Cr. P. C. authorised a particular police officer to prefer a complaint of offences under Ss. 121A, 122, 123 and 124 of the Penal Code, "or under any other section of the said Code which may be found applicable to the case" and the examination of the complainant also referred to the same sections : *Held* that no complaint under S. 121 I. P. C. was thereby authorised by the Local Govt. or in fact preferred, that the Magistrate had no power to commit thereunder and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court, authorising a complaint under the section which was not in fact made thereafter nor did S. 532 of the Cr. P. Code apply in such case. (*Barindra* v. *Emperor*, 37 Cal. 467.)

State briefly the principles laid down in *Barindra* v. *Emperor*. 32 Cal. 467. C. U. 1927 (b) [See Analysis of Leading Cases.]

8. Prosecution for certain classes of criminal conspiracy.—No Court shall take cognizance of

the offence of criminal conspiracy punishable under S. 120B of the Indian Penal Code—

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence or a legal act by illegal means, or an offence to which the provisions of S. 196 apply, unless upon complaint made by order or under authority from the Governor General in Council, the Local Government or some officer empowered by the Governor-General-in-Council in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented initiation of the proceedings.

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of S. 195 apply, no such consent shall be necessary. (S. 196A).

9. **Preliminary inquiry in certain cases.**—In the case of any offence in respect of which the provisions of S. 196 or S. 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in sny other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in S 155, sub-sec. (3) (S. 196-B).

10. **Prosecution of Judges and public servants.**—(1) When any person who is a Judge within the meaning of S. 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removeable from his office save by or with the the sanction of a Local Government or some higher

A complains against B, a Judge within the meaning of I. P. C. charging him with having obtained illegal

gratification as such Judge. Discuss the legality or otherwise of the complaint. C. U. 1927 (a)

authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government.

(2) **Power of Government as to prosecution.**—Such Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted and may specify the Court before which the trial is to be held. (S. 197).

A defames B. a married woman. B's son prefers a complaint in Court against A. Discuss the legality or otherwise of the complaint. C.U. 1927 (a)

11. **Prosecution for breach of contract, defamation and offences against marriage.**—No Court shall take cognizance of an offence falling under Chapter XIX or XXI or under Ss. 493 to 496 (both inclusive) of the Indian Penal Code, upon a complaint made by some person aggrieved by such offence : Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf. (S. 198).

Note.—Ch. XIX of the Penal Code deals with criminal breach of contracts of service. Ch XXI deals with defamation. Ss. 493-496 deal with offences relating to marriage of which S. 494 relates to bigamy. In cases of defamation of women, the party aggrieved is not necessarily limited to the person directly defamed, but includes other persons injured such as the husband and according to some views, the male relatives but a son cannot complain when his mother is defamed unless the latter is residing with the former. (25 Bom. 151, 14 Mad. 379, 32 Cal. 425, 1893 A. W. N. 207, 5 Lah. 301). See also the newly added Proviso.

12 **Prosecution for adultery or enticing a married women.**—No Court shall take cognizance of an offence, under S. 497 or S. 498 of the Indian Penal Code, except upon a complaint made by the

husband of the woman, or in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed: Provided that, where such husband is under the age of eighteen years, or is idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may with the leave of Court, make a complaint on his behalf, (S. 199).

Note.—Sec. 497 Indian Penal Code deals with adultery and S. 498 deals with the offences of enticing away or detaining a married woman with criminal intent.

13. **Objection by lawful guardian to complaint by person other than person aggrieved.**—When in any case falling under S. 198 or S. 199, the person on whose behalf the complaint is sought to be made in under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof. (S. 199-A).

CHAPTER XVI.—COMPLAINT TO MAGISTRATES. (Ss. 200—203).

Define complaint. What action should a Magistrate take on taking cognizance of a case on complaint? C.U. 1915(b). When is a Magistrate taking cognizance of a case not deemed to be required to examine the

1. **Examination of complaint.**—A Magistrate taking the cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate;

Provided as follows:

(a) when the complaint is made in writing nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under S. 192;

complainant ? C. U. 1913 (b) When is a Magistrate of the first or second class having power to take cognizance of an offence, empowered to direct a local investigation previous to the issue of process for compelling the attendance of the person complained against ? State the purpose of the local investigation and by whom it is to be made. C. U. 1913 (b). What is the procedure a Magistrate should adopt on receiving a complaint ? C. U. 1919 (a)

(*aa*) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;

(*b*) where the Magistrate is a Presidency Magistrate such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(*c*) when the case has been transferred under S. 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant. (S. 200).

Note.—S. 200-203 should be read together and the procedure laid down by these sections must be strictly complied with.

The object of the provision for examination of the complainant is to prevent the issue of process in cases where the examination of the complainant would show that the complaint was clearly false, frivolous or vexatious and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the court. (11 P. R. 1911).

Having examined the complainant the Magistrate must either (*i*) issue summons under S. 204 or (*ii*) order enquiry under S. 202 or (*iii*) dismiss the complaint under S. 203.

Omission to examine the complainant is a mere irregularity curable by S. 537 (13 A. L. J. 840 ; 1 Pat. L. J. 502: 59 I. C. 41: 58 I. C. 457, 15 Cr. L. J. 649). But in 43 M. L. J. 710, it has been *held* that omission to examine the complainant under S. 200 is a serious irregularity justifying interference in revision by the High Court. *See* also 23 C. W. N. 392, 4 Pat. L. W. 114.

A presents a complaint against B to a District Magistrate

The newly added (*aa*) dispenses with the examination of the complainant when the complaint is under S. 476.

2. Procedure by Magistrate not competent to take cognizance of the case.—(1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing such Magistrate shall direct the complainant to the proper Court. (S. 201).

3. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under S. 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of the process for compelling the attendance of the person complained against, and either inquire into the case himself or if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint :

Provided that save where the complaint has been made by a Court, no such direction shall be made—

unless the complainant has been examined on oath under the provisions of S. 200.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.

who orders a Magistrate subordinate to him "to examine the complainant and report." The subordinate Magistrate examines A and reports that a prima facie case has been made out against B. The District Magistrate thereupon issues process against B. Is the procedure legal ? Gives reasons ? C. U. 1909.

J, a servant, of N filed a petition of complaint but it was dismissed on the ground that the case was of a civil nature. Can J or N file a fresh petition of complaint on the same facts ? Has he any other remedy ? C.U. 1911 (a)

(3) This section applies also to the police in the town of Calcutta and Bombay. (S. 202).

Note.—This sectin applies only to cases where there is "complaint" as distinguished from a mere "information" in S. 191 and further applies only to those cases where the Magistrate is not satisfied as to the truth of a complaint. (24 P. R. 1898).

Under the old section a Magistrate could not call upon a subordinate Magistrate to make an enquiry other than a local investigation but now under the new amendment, a Magistrate other than a Magietrate of the third class may direct an enquiry by a subordinate Magistrate.

4. **Dismissal of complaint.**—The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath(if any) of the complainant and the result of any investigation or inquiry, if any, under S. 202 there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing. (S. 203).

Effect of dismissal of complaint under the section.—The decisions on this point are not uniform. In one set of cases, it has been held that the Magistrate has no jurisdiction to revive the proceedings upon a fresh complaint on the same facts after he has once dismissed the complaint unless the order of dismissal is set aside by a competent authority. (24 Cal. 286, 23 Cal. 983, 28 Mad. 255). In the other set of cases, it has been held that a Magistrate can entertain a fresh complaint on the same facts even though the dismissal of the first complaint is not set aside by a competent authority. (9 All 85; 28 Cal. 211 29 Mad. 126; 29 Cal. 726 F. B. *See* also.29 All. 7; 10 P. R. 1911 F. B; 16 Cr. L. J. 174 and 1 N. L. R. 18. In the last-mentioned case, it has been observed that if the order of dismissal or discharge amounts to a judgment within the meaning of S. 367, a fresh complaint cannot be entertained).

CHAPTER XVII.—COMMENCEMENT OF PROCEEDING BEFORE MAGISTRATE (Ss. 204-205).

1. **Issue of process.**—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which a warrant should issue in the first instance, he may issue, a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

Briefly describe the procedure to be followed in an enquiry before a Magistrate preparatory to commitment to a Court of Session. C.U. 1919 (b)

(2) Nothing in this section shall be deemed to affect the provisions of S. 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. (S. 204).

2. **Magistrate may dispense with personal attendance of accused.**—(1) Whenever a Magistrate issues a summons, he may if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided. (S. 205).

CHAPTER XVIII.—INQUIRY INTO CASES TRIABLE BY COURT OF SESSION OR HIGH COURT (Ss. 206-220).

1. **Power to commit for trial.**—(1) Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, or any Magistrate (not being a Magistrate of the third class)

Briefly describe the procedure

to be adopted by a Magistrate in an enquiry into cases triable by the Court of Sessions or High Court. C.U. 1924 (a) When may a Magistrate commit an accused person for trial by the Court of Session? C.U. 1909. State briefly the procedure which should be adopted by Magistrate in enquiries where the case is triable exclusively by a court of Session C.U. 1927 (b).

empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court. (S. 206).

2. **Procedure in inquiries preparatory to commitment.**—The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court. (S. 27).

3. **Taking of evidence produced.**—(1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any) and take, in manner hereinafter provided, all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

(3) **Process for production of further evidence.**—If the complainant or officer conducting the prosecution or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons. (S. 208).

4. **When accused person to be discharged.**—(1) When the evidence referred to in S. 208, sub-secs. (2) and (3) has been taken, and he has (if necessary) examined the accused *for the purpose of enabling him to explain any circumstances appearing in the evidence against him*, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused

person for trial, record his reasons and discharge him unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. (S. 209).

Object and mode of examining the accused.—*See* S. 342 *infra*. The examination of the accused should not be conducted in the manner of an adverse witness by Counsel. He should not be forced to convict himself after a series of searching questions the exact effect of which he may not really comprehend. The object of examining the accused is to enable a judge, to ascertain particularly, if the accused is undefended, what explanation he may desire to offer regarding any fact stated by a witness or after the close of the case how he can meet what the Judge may consider to be damnatory evidence against him (6 Cal. 96). The accused should never be examined with a view to filling up gaps in the evidence for the prosecution or to supplement the evidence where it is deficient. (26 Cal. 49; 1 C. L. R. 436). A commitment without examining the accused is bad in law (23 Mad. 636).

A Magistrate can discharge the accused at an earlier stage of the inquiry only if he is satisfied that the case is groundless. Otherwise he should hear evidence on both sides and then determine whether there are sufficient ground for committal (26 All. 564).

The discharge of a person, accused of an offence is not bar to his being again apprehended and brought before a Magistrate with a view to his commitment. (8 W. R. 61; 28 Cal. 397, 10 Bom. 319.) An order of discharge may be passed at any stage of the case and does not amount to an acquittal.

What is the difference between "sufficient ground for commitment and "sufficient ground for conviction. C. U. 1909

"Sufficient ground for commitment."—There is divergence of judicial opinion as to what is meant by the expression "sufficient ground for commitment," in this section. In one set of cases it has been held that the words "sufficient grounds" in the section do not mean sufficient grounds for convicting. (Ratanlal, 319; 27 Bom. 84; 11 Bom. 372; 14 P. R. 1908; 14 Cr. L. J. 529; 5 Cr. L. J. 213; 11 Cr. L. J. 692; 1904 A. W. N. 5; 1899 A. W. N. 135; 26 All. 561; 15 Mad. 39). A committing Magistrate has no doubt to perform the task of weighing the evidence before him with a view to decide a particular question but the question he has to decide is not whether the accused is innocent or guilty, but whether or not there are sufficient grounds for committing the accused for trial *i. e.* whether or not there is legal evidence or reasonable ground of suspicion, (26 All. 564). The law does not require that there should be, sufficient grounds for convicting the accused before he can be committed for trial. All that is necessary is that a *prima facie* case should be made out. "The duty of the committing officer is to ascertain whether by the evidence of the prosecution a *prima facie* case is made out against the accused. Magistrates are apt to suppose that it is incumbent on them to satisfy themselves fully of the guilt of the accused before making the commitment. This idea is erroneous. Where there is a sufficient ground for putting an accused on his trial the Magistrate should make a commitment, and he has discharged all the duty imposed upon him." (*Per* Turner J. in 3 All. H. C. R. 27). But in the other set of cases it has been held that it is the duty of the Magistrate to consider whether there are sufficient grounds for *convicting the accused* and amongst the grounds, may properly be placed, the cosideration, whether on the evidence before him it is probable that conviction would be arrived at (7 C. W. N. 77; 8 Cr. L. J. 360; 14 W. R. 16; 261 All. 265).

5. **When charge to be framed.**—(1) When, upon such evidence being taken and such examination

(if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand declaring with what offence the accused is charged.

(2) **Charge to be explained, and copy furnished to accused.**—As soon as such charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost. (S. 210).

6. **List of witnesses for defence on trial.**—(1) The accused shall be required at once to give in orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) **Further list.**—The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial. (S. 211).

7. **Power of Magistrate to examine such witnesses.**—The Magistrate may, in his discretion, summon and examine any witness named in any list given to him under S. 211. (S. 212).

8. **Order of commitment.**—(1) When the accused, on being required to give in a list under S. 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under S. 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient

grounds for committing the accused, he may cancel the charge and discharge the accused. (S. 213).

On what grounds may a commitment be quashed? C. U. 1909.

9. Quashing commitments under S. 213.—A commitment once made under S. 213 by a competent Magistrate or by a Civil or Revenue Court under S. 478, can be quashed by the High Court only, and only on a point of law. (S. 215.)

On what grounds and by which Court can the commitment of an accused person to the Court of Sessions be quashed? C. U. 1915 (a) Write brief note on :—The power of the High Court to quash a commitment C.U. 1916 (b) Refusal to summon unnecessary witness unless deposit made.

10. Summons to witnesses for defence when accused is committed.—When the accused has given in any list of witnesses under S. 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself, to appear before the Court to which the accused has been committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly.

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses. (S. 216).

11. Bond of complainants and witnesses.—(1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

(2) **Detention in custody in case of refusal to attend or to execute bond.**—If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be. (S. 217).

12. **Commitment when to be notified.**—(1) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge; and shall send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, etc., to be forwarded to High Court or Court of Session.

(2) **English translation to be forwarded to High Court.**—When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record. (S. 218).

13. **Power to summon supplementary witnesses.**—(1) The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under S. 206 may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall be given to the accused free of cost. (S. 219).

14. **Custody of accused pending trial.**—Until and during the trial, the Magistrate shall, subject to the provisions of the Code regarding the taking of bail, commit the accused by warrant, to custody. (S. 220).

CHAPTER XIX.—CHARGE. (Ss. 221-240.)

A.—Form of Charges.

What do your understand by "charge ?" Who can be charged jointly and on how many charges can a person be tried at one trial ? C. U. 1921 (a) What is a charge ? What object it is meant to serve ? Is it necessary to draw up a charge in respect of every offence punishable under the I. P. Code ? If not, when does the law dispense with it ? C. U. 1911 (b).

1. **Charge to state offence.**—Every charge under this Code shall state the offence with which the accused is charged.

(2) **Specific name of offence sufficient description.**—If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) **How stated where offence has no specific name.**—If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) **What implied in charge.**—The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) **Language of charge.**—In the presidency-towns the charge shall be written in English : elsewhere it shall be written either in Engligh or in the language of the Court.

What are the particulars required to be stated in a charge ? What is the effect of error or omission

(7) **Previous conviction when to be set out.**—If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think

fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted the Court may add it at any time before sentence is passed. (S. 221).

in respect of the same ? C. U. 1912 (a)

Note.—A chrge may be defined te be a written document containing the description of the offence which the Court, either in its inquiry or trial finds *prima facie* proved by evidence before it, to have been committed by the accused so as to require him to defend himself. It includes any head of charge when the charge contains more heads than one.

What is meant by the word 'charge ?' In what cases are charges framed, and what particulars should it contain ? C. U. 1919 (a)

The provisions relating to charge are intended to provide that the charge shall give the accused full notice of the offence charged against him. An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him. Unless he has this knowledge he will be seriously prejudiced in his defence, especially in cases where it is sought to implicate him for acts not committed by himself but by others with whom he was in company. (11 Cal. 106). But where the accused fully understood the nature of the offence with which they were charged, any defect in the charge is cured by Ss. 225 and 537 (a) Cr. P. C. (*Amritalal* v. *Emperor.* 42 Cal. 957). A charge under S. 120-B, I. P. C. is not bad merely because it does no specify the explosive substance, which, it is alleged. the accused had conspired with one another and with other persons to make and keep. (*Ibid*).

Where a warrant case and summons-case are tried together at one trial, the trial of the two together forms only one case and not two and as the case relates to an offence punishable with more than six month's imprisonment it is a warrant case. The fact that it relates to some other offence also does not alter its nature and so formal charges ought to be framed for both offences. (3 Cr. L. J. 350).

2. Particulars as to time, place and person.—(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect

At what stage of trial can a Magistrate frame a charge? What are the particulars that a charge should contain? Is a defective charge necessarily fatal to a conviction? C.U. 1913 (a).

of which, it was committed, are reasonably sufficient to give the accused notice of the matter with which he is charged.

Note.—Under S. 222 (1), Cr. P. Code, particulars as to the time of the alleged offence are necessary and the prosecution should be careful in this respect. (37 Cal. 957, 981).

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of S. 234. Provided that the time included between the first and last of such dates shall not exceed one year. (S. 222).

Note.—When charges refer to items which extend over a year, trial is illegal. (17 C. W. N. 479).

Discuss shortly the law as to framing of charges in a criminal trial C.U. 1915 (a).

3. When manner of committing offence must be stated.—When the nature of the case is such that the particulars mentioned in Ss. 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. (S. 223).

What is meant by a charge in a criminal trial? Point out the defects, if any, in a charge drawn up against an accused person in the following terms: "That you committed theft by removing a

Illustrations.—(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which theft was effected. (b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B. (*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false. (*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions. (*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in

which A murdered B. (*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

box from the dwelling house of A and thereby committed an offence punishable under S. 380 of the Indian Penal Code" C.U. 1917 (b).

4. **Words in charge taken in sense of law under which offence is punishable.**—In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable. (S. 224).

What do you mean by the framing of a charge at a criminal trial, and what is its scope and object? To what extent does the law tolerate a defective charge? C. U. 1916 (b).

5. **Effect of errors.**—No error in stating either the offence or the particulars required to be stated in the charge, and omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. (S. 225).

Write a brief note on the effect of an error in a charge? C. U. 1916 (b).

Illustrations.—(*a*) A is charged, under S. 242 of the Indian Penal Code, with "having been in possesion of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material. (*b*) A is charged with cheating B. and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material. (*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error. (*d*) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date

State and illustrate how far an omission to frame a charge or an error in stating the particulars required to be stated in the charge vitiate a crimnial trial. C. U. 1927 (a).

Discuss how far the

absence of a charge or an error in stating the offence or other particulars required to be stated in a charge is fatal to the validity of the trial. C. U. 1929 (a).

of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial. (*e*) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled and that the error was material.

6. Procedure on commitment without charge or with imperfect charge.—When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges. (S. 226).

Illustrations.—(1) A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted. (2) A is charged with forging a valuable security under S. 467 of the Indian Penal Code. A charge of fabricating false evidence under S. 193 may be added. (3) A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under S. 235 of the Indian Penal Code cannot be added.

Effect of omission to frame charge.—This section does not specifically deal with the case of *entire* absence of charge, for which see Ss. 232 and 535 *infra*. S. 537 covers errors or omissions in the charge but not its entire absence.

A Magistrane in the course of a trial finds that the charge already framed requires to be

7. Court may alter charge.—Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of the trials before the

Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused. (S. 227).

8. **When trial may proceed immediately after alteration.**—If the charged framed or alteration or addition made under S. 226 or S. 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court, may in its discretion, after such charge or alteration or addition has been frame or made, proceed with the trial as if the new or altered charge had been the original charge (S. 228).

9. **When new trial may be directed, or trial suspended.**—If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necssary. (S. 229).

10. **Stay of proceedings if prosecution of offence in altered charge require previous sanction.**—If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded. (S. 230.)

11. **Recall of witnesses when charge altered**—Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material. (S. 231).

altered. State the procedure to be followed. C.U. 1915 (b)

Under what circumstances may a new

trial be ordered and by what courts? When can the court quash a conviction? C. U. 1906.

12. Effect of material error.—(1) If any apellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction. (S. 232).

Illustration.—A is convicted of an offence, under S. 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceeding that A had no such knowledge, it shall quash the conviction.

B.—Joinder of charges.

Under what circumstances does the law permit a joinder of charges? What is the general rule on his behalf? C. U. 1917 (a), 1921 (Suppl) A Magistrate tries an accused at tone trial for three offences wo of which are charges

1. Separate charges for distinct offences.—For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Ss. 234, 235, 236 and 239. (S. 233).

Illustration.—A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Note.—This section contains the general rule that for every distinct offence there shall be a separate charge, in order that the mind of the Court might not be prejudiced against the prisoner as would be the case if he were tried in one trial upon different charges, based upon different evidence, because the Court while trying him on one of the

charges might be unfairly influenced by the evidence against him on the other charges. (7 All. 17). Another object of this section is to see that the accused is not bewildered in his defence by having to meet several charges in no way connected with one another. (19 C. W. N. 972).

A misjoinder of charges or parties is not merely an *irregularity* but an *illegality* not curable by the provisions of S. 537 *infra.* (25 Mad. 6 P. C.) "It cannot be disputed that if misjoinder of charges is established the trial must be deemed illegal because held contrary to an express provision of the law relating to the mode of trial." (7 Cal. at p. 982).

For every distinct offence there should be a separate charge. Separate offences should not be lumped together in one single charge, but each offence should form a separate head of charge and for every head of charge there should be a distinct finding and sentence. (3 N. W. P. H. C. R. 314).

When two offences are committed and each of these two offences has no connection with the other, they are distinct offences. (*Per* Sharfuddin J. in 19 C. W. N. 972) The following offences have been held to be distinct offences :—(1) Offences falling under different sections of the Penal Code *e. g.* theft and receiving stolen property (28 Cal. 10 ; 1 C. W. N. 35), offences under Ss. 167 and 466 I. P. C. (8 Cal 450), offences under Ss. 411 and 413 I. P. C. (8 Cal. 634) offences under Ss. 182 and 500 (37 Cal. 604), kidnapping a boy and assaulting the mother who went to demand the boy (26 Mad. 454); (2) offences committed on different occasions even though the offence be of the same kind *i.e.* falling under the same section of the Penal Code, *e. g.* two attempts to cheat committed on two different dates (2 C. L. J, 678), receiving stolen articles on different occasions, though the articles were the proceeds of a single burglary. (2 P. L. T. 47) ; (3) offences committed against different persons *e.g.* cheating three persons (41 Cal. 66), wrongful confinement of several persons on several occasions (19 M. W. N. 199) ; (4) offences in respect of distinct sums of money *e.g.* misappropriation of two sums of money collected on different dates (40 Cal. 846).

of theft and the third of receiving stolen property. Discuss the legality of the procedure C U. 1919 (b)

A person is accused of having committed criminal breach of trust on five different occasions within one year. Can he be tried for all these offence at one trial ? If the various amounts misappropriated on these occasions cannot be separately specified would it be sufficient to specify only the gross amount of defalcation during the year ? C. U. 1910 (a) [See S. 222 (2)].

When can a person be charged with more offences than one at the same trial ? C. U. 1926 (b).

(See Mitra's Cr. P. C. 518) Offences of the same kind committed on one occasion though consisting of parts are not distinct offences but are to be treated as constituting one offence, *e. g.* the stealing of several bullocks from the same herdsman at the same time is one offence (1881 A. W. N. 154).

2. Three offences of same the kind within a year may be charged together.—(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law. Provided that, for the purpose of this section an offence punishable under S. 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under S. 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence. (S. 234).

If an accused be tried for and convicted of several charges of more than three offences of the same kind and extending over more than one year, is this an error or irregularity which can be remedied by

Object and Scope of the Section.—This section and Ss. 235, 236, and 239 are exceptions to the broad and general rule enunciated in S. 233, viz. that for every distinct offence there should be a separate charge and every charge should be tried separately. This section simply limits the number of offences that can be tried in a single trial. But there is nothing in the section to prevent an accused from being *separately* charged and tried on the same day for any number of distinct offences of the same kind committed within the year. (3 Cal. 540). Further, the section does not say that more than three *charges* cannot be tried together. It simply says that the trial should be limited to three *offences* of the same kind. If the same series of acts are charged under

different sections of the Indian Penal Code then, any number of such charges can be tried in one and the same trial. (10 Bom. L. R. 301.) This section does not apply when *several* persons are jointly tried for committing offences of the same kind. To such a case Sec. 239, Cl. (3) will apply. The present section applies to the trial of *one* accused only. (33 Cal. 292). This section applies where a person is accused of *more offences* than one ; it does not apply where a person is charged for *one offence* only extending over a period exceeding one year. (47 Cal. 145).

S. 537 of the Cr. P. C. ? Give reasons C. U. 1907.

This section provides that a man may only be tried for three offences of the same kind if committed within a period of twelve months. The reason of such a provision is obviously that in order that the jury may not be prejudiced by the multitude of charges and the inconvenience of hearing together such a number of instances of culpability and the consequent embarrassment both to Judges and the accused. The joinder at one time of too many charges is likely to cause confusion and to interfere with the definite proof of a distinct offence. which it is the object of all criminal procedure to obtain. (25 Mad. 61).

What do you understand by "Joinder of charges." C. U. 1922 (a)

Effect of non-compliance with the provisions of the section -Non-compliance with the express provisions of this section cannot be regarded as a mere irregularity that can be remedied by S. 537 of the Code. A disobedience to an express provision of law as to a mode of trial cannot be regarded as a mere irregularity. If a man is tried for four specific offences of the same kind at one trial, such a procedure would not be merely an irregularity which could be cured by S. 537, but a defect in the trial which would render the whole trial inoperative, unless possibly it would be cured by some subsequent proceeding by striking out some portion of the charge. (*Per* Petharam C. J. in 14 Cal. 128). The joinder at one trial of several charges in contravention of the provisions of Ss. 233 and 234 is not a mere irregularity. It is an illegality not cured by S. 537 of the Code. (25 Mad. 61 P. C.)

A commits six different thefts at six different times and places within the space of one year. He is tried at one trial and charged jointly for all the offences. Discuss the legality of the procedure. C. U. 1921 (Suppl).

A commits four different thefts at different times and places within the space of 6 months. He is tried at one trial and charged jointly for all the offences. Discuss the legality of the procedure C. U. 1917 (b).

3. Trial for more than one offence.—(1) If in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Discuss shortly, with reference to leading cases the principles governing the joint trial of a number of persons accused of different offences which are alleged to have been committed "in the same transaction." C. U. 1920 (a).

Illustrations.—(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under Ss. 225 and 333 of the Indian Penal Code. (*b*) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and covicted of, offences under Ss. 454 and 497 of the Indian Penal Code. (*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of offences under Ss. 498 and 497 of the Indian Penal Code. (*d*) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under S. 446 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under S. 473 of the Penal Code. (*e*) With intent to cause injury to B, A institutes a criminal proceeding against him knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under S. 211 of the Indian Penal Code. (*f*) A, with intent to cause injury to B, falsely accuses him of having committed an effence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of offences under Ss. 211 and 194 of the Indian Penal Code. (*g*) A, with six others, commits the offences of rioting, grievous hurt and

assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under under Ss. 147, 325 and 152 of the Indian Penal Code. (*h*) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with and convicted of, each of the three offences under S. 506 of the Indian Penal Code.

A is accused on seven counts and evidence given on acts extending over 2½ years and fortyone in number. Can the accused be lawfully convicted? C. U. 1914(b).

'Same transaction.'—Offence though committed at different times may form one and the same transaction. The test for determining whether several offences are so connected together as to form one and the same transaction depends upon whether they are so related together in point of purpose or as cause and effect or as principal and subsidiary acts as to constitute one continuous action. (27 Bom. 135.) A mere interval of time between the commission of one offence and another does not by itself necessarily import want of continuity, though the length of the interval may be an important element in determining the question of the connection between the two. In 15 Bom. 491 Birdwood. J., deduced the following tests for the sameness of a transaction from the illustrations to Ss. 235 and 239 *viz.* that the offences (*i*) formed part of a continuous series of acts [Ills. (*a*). (*b*) and (*c*)] or (*ii*) were committed at the same time [Ills. (*d*). (*g*) and (*h*)] or (*iii*) were committed with the same specific intent [Ills. (*e*) and (*f*)] or (*iv*) were connected by the fact that one was committed in the course of the commission of the other [*See* ills. (*b*) and (c) to S. 239]. According to its etymological meaning the word "transaction" means *carrying through* and suggests not necessarily proximity of time, so much as continuity of action and purpose; a series of actions separated by intervals of time are not excluded provided that those jointly tried have been directed throughout to one and the same objective (30 Bom. 49). If a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose or by the relation of cause

When can a person be tried in one and the same trial for more than one offence? C. U. 1904, 1922 (a).

When may different offences be charged together? Is there any limit to their number? If so, when? Three different robberies are committed by the same person in three different

houses on the same night? May these offences be tried together? Give reasons. C. U. 1909.

and effect as to constitute in the opinion of the Court one transaction, then the accused may be charged with and tried at one trial for every offence committed in such series of acts. It would also include such subsidiary acts as would make the co-accused *participi criminis* or an accessory after the fact. (8 Cr. L. J. 191).

A is found in possession of properties stolen from the house of B on the 9th June, from the house of C on the 12th June, and from the house of D on the 20th June. How is he to be tried? C. U. 1919 (a)

Under what circumstances can more persons than one be jointly tried. Under what circumstances can a person be tried for more offences than one at the same trial? C. U. 1918 (a).

(2). offences falling within two definitions.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Illustrations.—(*i*) A wrongfully strikes B with a cane. A may be separately charged with and convicted of offences under Ss. 352 and 323 of the Indian Penal Code. (*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B. thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under Ss. 411 and 414 of the Indian Penal Code. (*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of offences under Ss. 317 and 304 of the Indian Penal Code. (*l*) A dishonestly uses a forged document as genuine evidence. in order to convict B, a public servant, of an offence under S 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under Ss. 471 (read with S. 466) and 196 of the same Code.

(3) Acts constituting one offence, but constituting when combined a [illegible]ce.—If several acts, of which one or more than one would by itself or themselves contitute an offence, constitute when combine a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined and for any offence constituted by any one, or more of such acts.

Illustration—(*m*) A commits robbery on B. and in doing so voluntarily causes hurt to him. A may be separately charged with and convicted of, offences under Ss. 323, 392 and 294 of the Indian Penal Code. C. U. 1922(a).

(4) Nothing contained in this section shall affect the Indian Penal Code, S. 71. (S. 235).

Note.—This section should be read with Ss. 35 and 71 I. P. C This sction lays down the rules on the subject of criminal pleading and procedure only and not as to assessment of punishment which latter is provided for by Ss. 35 and 71. I. P. C. *Vide* Author's Student's Indian Penal Code, 4th Edition, pp. 37 *etseq.* This is an enabling section and not imperative. Though it provides for a joint trial of offences committed in the same transaction, yet a separate trial for each of the offences is not illegal. (8 Cal. 481). Where it is likely that the joinder of charges will result in bewildering accused in his defence, such joinder will not be permitted even though the offences were committed in the same transaction (1 S. L. R. 73).

4. **Where it is doubtful what offence has been committed.**—If a single act or a series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences (S. 236).

Illustrations.—(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating. (*b*) A states on oath before the Magistrate that he saw B hit C with a club. Before the Session Court A states on oath that B never hit C. A may be charged in the alternative and convicted to intentionally giving

false evidence, although it cannot be proved which of these contradictory statements was false.

Note.—This section authorises a charge in the alternative when it is doubtful which of several offences the facts which can be proved will constitute and not where there may be a doubt as to whether the accused is guilty of any of the charges at all. (7 N. W. P. H. C. R. 137). As to assessment of punishment in such cases—*vide* Author's Students' Penal Code, 4th Edition. p. 40.

When can a person charged with one offence be convicted of another? Illustrate your answer by examples C. U. 1907, 1924 (b).

5. **When a person is charged with one offence he can be convicted of another.**—(1) If in the case mentioned in S. 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it. (S. 237).

Illustration.—A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

Note.—This is an enabling section which empowers the Court to convict the accused of offences for which no charge has been framed but for which a charge could have been framed under S. 236. This section has to be read with S. 236. If the facts of the case do not fall under S. 236, the section has no application. (18 C. W. N. 1276).

6. **When offence proved included in offence charged.**—(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence

he may be convicted of the minor offence, although he is not charged with it.

(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence, although the attempt is not separately charged,

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in S. 178 or S. 199 when no complaint has been made as required by that section. (S. 238).

Illustrations.—(*a*) A is charged under S. 407 of the Indian Penal Code with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of a trust under S. 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under S. 406. (*b*) A is charged under S. 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under S. 355 of the Code.

7. **What persons may be charged jointly.**—The following person may be charged and tried together, namely :—

When can more persons than one be charged and tried jointly in the same trial ? C. U. 1912 (b), 1918 (a). What persons may be jointly charged and tried in a criminal trial ? C. U. 1925 (b). A is charged with theft of a necklace, and B with having dishonestly received the stolen necklace, knowing

(*a*) persons accused of the same offence committed in the course of the same transaction :

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence :

(*c*) persons accused of more than one offence of the same kind within the meaning of S. 234 committed by them jointly within the period of twelve months :

(*d*) persons accused of different offences committed in the course of the same transaction ;

(*e*) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have

he same to be stolen. Can they be tried together? C.U. 1926 (b) [Yes. See cl. (e)].

been transferred by any such offence committed by the first-named persons, or of abetment or attempting to commit any such last-mentioned offence;

A is charged with stealing a watch; B with receiving it, knowing it to be stolen. May they be tried together? If so, when? C.U. 1909.

(*f*) persons accused of offences under Ss. 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(*g*) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges. (S. 239).

Fully explain the principles enunciated in the case of Amrita Lal Hazra v. Emperor, 42 Cal. 957. C.U. 1927 (a), 1928 (b).

Note.—In *Amrita Lal Hazra* v. *Emperor* (42 Cal. 957), Mukerjee and Richardson J. J. observe: "It is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction. But circumstances which must bear on the determination of the question in an individual case may be easily indicated: they are proximity of time, unity or proximity of place, continuity of action and community of purpose or design. To take one illustration. A and B conspire to cheat X; in pursuance of that conspiracy and in fulfilment of its object, A cheats X on a specific occasion. The position may be clearly maintained that the two different offences of conspiracy to cheat committed by A and B and the offence of cheating committed by A alone, have been committed in the same transaction.......We hold accordingly that if A, B and C conspire to make or have in their possession or under their control an explosive substance within the meaning of the Explosive Substances Act (Act 4 of 1908.) and if in pursuance of such conspiracy, A makes or has in his possession or under his

control an explosive substance, they may, if the Court thinks fit, be charged and tried together under S. 120-B, I. P. C. and S. 4 (b) of Act 4 of 1908."

The trial of some conspirators without placing on their trial all the known co-conspirators named in the charge is not bad. It is indeed open to the court to place the co-conspirators on their trial separately. (37 Cal. at p. 986).

8. Withdrawal of remaining charges on conviction on one of several charges.—When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with inquiry into or trial of the charge or charges so withdrawn. (S. 240).

Form of Charges.

A.—Charge with one head,

(*a*) I *(name and office of Magistrate, etc.)* hereby charge you *(name of accused person)* as follows :—

(*b*) that you, on or about the day of at , waged war against Her Majesty the Queen Empress of India and thereby committed an offence punishable under S. 121 of the Indian Penal Code, and within the cognizance of the Court of Session *(when the charge is framed by a Presidency Magistrate for* "Court of Session" *substitute* "High Court".

S. 121 I. P. C.

or (*b*) That you, on or about the day of at with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power

S. 124 I. P. C.

as such Member, assaulted such Member, and thereby committed an offence punishable under S. 124 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

S. 161 I. P. C.

or (*b*) That you, being a public servant in the Department directly accepted from *(state the name)*, for another party (*state the name*) a gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under S. 161 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

S. 166 I. P. C.

or (*b*) That you, on or about the day of at , did (*or* omitted to do *as the case may be*) such conduct being contrary to the provisions of Act , S and known by you to be prejudicial to , and thereby committed an offence punishable under S. 166 of the Indian Penal Code and within the cognizance of the Court of Session (*or* High Court).

S. 195 I. P. C.

or (*b*) That you, on or about the day of at in the course of the trial of before stated in evidence that " " which statement you either knew or believed to the false, or did not believe to be true and thereby committed an offence punishable under S. 195 of the Indian Penal Code, and within the cognizance of the Court of Session (*or High Court*).

S. 304. I. P. C.

or (*b*) That you, on or about the day of at , committed culpable homicide not amounting to murder by causing the death of , and thereby committed an offence punishable under S. 304 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

S. 306 I. P. C.

or (*b*) That you, on or about the day of at abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under S. 306 of the Indian Penal Code, and within cognizance of the Court of Session (*or* High Court).

or (*b*) That you, on or about the day of , at voluntarily caused grievous hurt to , and thereby committed an offence punishable under S. 325 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

S. 325 I. P. C.

or (*b*) That you, on or about the , day of at , robbed, (*state the name*), and thereby committed an offence punishable under S. 392 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

S. 392 I. P. C.

or (*b*) That you, on or about the , day of at , committed dacoity, an offence punishable under S. 395 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

S. 395 I. P. C.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

(*Signature and seal of the Magistrate*).

(*In cases tried by Magistrate substitute* "within my cognizance" *for* "within the cognizance of the Court of Session." and in (*c*) omit "by the said Court.)"

B.—Charge with Two or More heads.

(*a*) I (*name and office of Magistrate, etc.,*) hereby charge you (*name of accused person*) as follows :—

(*b*) *First.*—That you, on or about the date of at knowing a coin to be counterfeit, delivered the same to another person by name *A. B.*, as genuine, and thereby committed an offence punishable under S. 241 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

S. 241 I. P. C.

Secondly.—That you, on or about the day of, at knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under S. 241 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

or (*b*) *First.*—That you, on or about the day of at, committed murder by causing the death of, and

Ss. 302 and 304 I. P. C.

thereby committed an offence punishable under S. 302 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Secondly.—That you, on or about the day of at by causing the death of, committed culpable homicide not amounting to murder, and thereby committed an offence punishable under S. 304 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Ss. 379 and 382 I. P. C.

or (*b*) *First.*—That you, on or about the day of, at committed theft, and thereby committed an offence punishable under S. 379 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Secondly.—That you, on or about the day of, at committed theft, having made preparations for causing death to a person in order to the committing of such theft, and, thereby committed an offence punishable under S. 382 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Thirdly.—That you, on or about the day of at , committed theft, having made preparations for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under S. 382 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Fourthly.—That you, on or about the day of at , committed theft, having made preparations for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under S. 382 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

Alternative charges on S. 193.

or (b) That you, on or about the day of in the course of the inquiry into , before , stated in evi-

dence that " " and that you, on or about the day of ' at , in the course of the trial of before , stated in the evidence that " " one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under S. 193 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court).

A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath the B never hit C. How should the charge be drawn? Write out shortly a charge in such a case? C. U1911 (a)

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

(*Signature and seal of the Magistrate.*)

(*In cases tried by Magistrate substitute* "within my cognizance" *for* "within the cognizance of the Court of Session" *and in* (*c*) *omit* "by the said Court.")

(C) Charges for Theft after previous conviction.

I (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*) as follows :—

That you, on or about the day of , at committed theft, and hereby committed an offence punishable under S. 379 of the Indian Penal Code, and within the cognizance of the Court of Session (*or* High Court or Magistrate *as the case may be*).

And you the said (*name of accused*), stand further charged that you before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was held*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect and that you are thereby liable to enhanced punishments under S. 75 of the Indian Penal Code.

And I hereby direct that you be tried, etc.

CHAPTER XX.—TRIAL OF SUMMONS-CASES BY MAGISTRATES. (Ss. 241-250).

A is tried at the same trial for two offences, one of which is triable as a summons case, the other as a warrant case. What is the procedure to be adopted? C. U. 1913 (a)

Note.—This Chapter deals only with the trial of summons-cases, and a warrant-case cannot be tried under this Chapter nor can a summons-case be tried under Chapter XXI. (7 Mad. 454) If a case triable as a warrant-case is tried as a summons-case, it is more than an irregularity. Where two charges arising out of the same transaction are brought against a person, one of which is a summons-case and the other a warrant-case, the case should be tried as a warrant-case (11 Cal. 91).

Summons-case.—A summons-case is a case relating to an offence punishable with imprisonment for a term not exceeding six months or with fine or whipping. *See supra.*

What is a Summons case? C. U. 1913 (a)

1. **Procedure in summons cases.**—The following procedure shall be observed by Magistrates in the trial summons-cases. (S. 241).

Briefly describe the procedure relating to the trial of summons cases. C. U. 1913(a), 1917 (b).

2. **Substance of accusation to be stated.**—When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge. (S. 242).

3. **Conviction on admission of truth of accusation.**—If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. (S. 243.)

Describe the procedure to be observed by the Magistrates in the trial of summons cases. C. U. 1912(a), 1919 (a).

4. **Procedure when no such admission is made.**—(1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the

prosecution and also to hear the accused and take all such evidence as he produces in his defence.

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application. require that his reasonable expenses, incurred in attending for the purpose of the trial, be deposited in Court. (S. 244).

5. **Acquittal.**—(1) If the Magistrate upon taking the evidence referred to in S. 244 and such further evidence (if any) as he may, of his own motion. cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

(2) **Sentence.**—Where the Magistrate does not proceed in accordance with the provisions of S. 349 or S. 562, he shall, if he finds the accused guilty, pass sentence upon him according to law. S. (245).

6. **Finding not limited by complaint or summons.**—A Magistrate may, under S. 243 or S. 245 convict the accused of any offence triable under this Chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons. (S. 246).

What are the possible consequences of non-appearance of the complainant in a summons case ? C. U. 1923 (a). Discuss how far the absence of the com-

7. **Non-appearance of complainant.**—If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day : Provided that, where the complainant is a public servant and his personal attendance is not

plainant affects the trial of a criminal case instituted on his complaint. C.U. 1929 (a). [See S. 259 *infra*] What is the effect of the absence of the complainant in the trial of a summons case? C.U. 1928 (a).

required, the Magistrate may dispense with his attendance and proceed with the case. (S. 247).

Note.—Compare S. 259 *infra* where the effect of the complainant's non-appearance in warrant-cases is dealt with.

A makes a complaint against B who is summoned to answer the charge. On a subsequent date fixed for the hearing of the case, A is not present in Court. What order is it open to the Court to pass? C. U. 1928 (b).

8. **Withdrawal of complaint.**—If a complainant at any time before a final order is passed in any case under this Chapter satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused. (S. 248)

9. **Power to stop proceedings when no complainant.**—If any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused. (S. 249).

Frivolous Accusations in Summons and Wararnt Cases.

State the nature of the summary procedure a Magistrate can adopt when he finds the complainant's case to be frivolous and vaxatious. C. U. 1912 (a) Describe shortly the procedure prescribed for dealing with frivolous accusation in criminal cases. C.U. 1926 (a).

1. **False frivolous or vexatious accusations.**—(1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of a compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-sec. (2A), the provisions of Ss. 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay conpensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made on information given by him : Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been

decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order. (S. 250).

Note.—The object of this section is not to punish the complainant but to award by a summary order some compensation to the person against whom a frivolous or vexatious complaint is brought, leaving it to him to obtain further redress against the complainant by a regular civil suit or criminal prosecution. (30 Cal. 123). In order to enable a Magistrate to pass an order for compensation there must be a complete discharge or acquittal after a frivolous or vexatious charge had been heard. (24 Cal. 53). Where an offence is compounded under S. 345, compensation under this section cannot be awarded, as there is neither discharge not acquittal. (7 C. P. 2)

CHAPTER XXI—TRIAL OF WARRANT-CASES BY MAGISTRATES. (Ss. 251-259).

State shortly the procedure to be followed in the trial of warrant cases. C U. 1902. 1916 (b), 21 (Suppl.), 1919 (b).

1. **Procedure in warrant cases.**—The following procedure shall be observed by Magistrates in the trial of warrant-cases. (S. 251) :

2. **Evidence for prosecution.**—(1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

Sketch shortly the course of trial of a warrant case from the initiation of proceedings to acquittal or conviction. C. U. 1921 (a) 1922 (a).

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary. (S. 252).

3. **Discharge of accused.**—(1) If, upon taking all the evidence referred to in S. 252, and making such

examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2). Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if for reasons to be recorded by such Magistrate, he considers the charge to be groundless. (S. 253).

A is sent up before a Magistrate of the first class on a charge of theft of a ring valued at Rs. 100. Describe the procedure to be adopted in his trial. C. U. 1920 (b).

Note.—A Magistrate who has discharged an accused person under this section may re-entertain a fresh complaint on the same facts. It is not necessary to get the first order of dismissal set aside. There is nothing to prevent a Magistrate after he has discharged an accused person under this section from enquiring again into the case against him. A discharge not operating as an acquittal leaves the matter at large for all purposes of judicial enquiry.

What is the distinction between *Discharge* and *Acquittal* in a warrant-case? C. U. 1923 (a) [*See* also Notes under S. 403 *infra*.]

4. **Charged to be framed when offence appears proved.**—If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused (S. 254).

5. **Plea.**—(1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon. (S. 255).

5A. **Procedure in case of previous convictions.**—In a case where a previous conviction is charged under the provisions of S. 221, sub-sec. (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under S. 255, sub-sec. (2), or S. 258, take evidence in respect of

the alleged previous conviction, and shall record a finding thereon. (S. 255-A).

A is tried for grievous hurt which is an offence triable as a warrant case. After the framing of the charge, A makes an application to be allowed to cross-examine the witnesses for the prosecution. The application is refused. Discuss the legality of the procedure. C. U. 1917 (b).

6. **Defence.**—(1) If the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case or, if the Magistrate, for reasons to be recorded in writing, so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon his defence and produce his evidence.

(2) If the accused puts in any written statement the Magistrate shall file it with the record. (S. 256).

Note.—The accused has a right to cross-examine the prosecution witnesses after a charge is framed against him; the Magistrate has no discretion in this matter to refuse to allow the cross-examination and the fact that witnesses might have been fully cross-examined before the charge does not affect his right to cross-examine them after the charge. After a charge has been drawn up, it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and if so, which of the witnesses for the prosecution whose evidence has been taken. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice according to S. 257, Cl. 1. (27 Cal. 370).

7. **Process for compelling production of evidence at instance of accused.**—(1)—If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling

the attendance of any witness for the purpose of examination or cross-examination, or the production, of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court. (S. 257).

8. **Acquittal.**—(1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal,

(2) **Conviction.**—Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of S. 349 or S. 562, he shall, if he finds the accused guilty, pass sentence upon him according to law. (S. 258).

Note.—No judgment of acquittal can be recorded until a charge has been drawn up. (22 W. R. 25). An order dismissing a complaint or discharging the accused after a charge is framed amounts to an acquittal. (5 C. L. R. 339 ; 38 Mad. 585).

9. **Absence of complainant.**—When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused. (S. 259).

Discuss how far the absence of the complainant affect the trial of a criminal case instituted on his complaint. C. U. 1929 (a)

[*See* also S. 247 *supra*.] What is the effect of the absence of the complainant in the trial of a warrant case? C. U. 1928 (a).

Note.—A Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant in warrant-cases not coming within this section (*e. g.* where the proceedings are not instituted on complaint or the offence is non-compoundable) except in cases coming within the last clause of S. 253. (10 Cal. 57).

Compare S. 247 *ante* regarding the effect of the complainant's non-appearance in Summons-cases. "A summons case and a compoundable or a non-cognizable warrant case can come to an end automatically if the complainant do not appear, provided, in a warrant case, that no charge has been drawn. That automatic end is an *acquittal* in a summons case and a *discharge* in a warrant case. But in a summons case this does not apply if the complainant is a public servant, and the court in all Summons cases has a discretion to adjourn the trial and await futher happenings. In all other classes of cases, the non-appearance of the complainant, if there be one, has at most the same effect on the proceedings which the non-appearance of a witness may have, and can have no greater effect" (Sabonadiere, 322-23).

What are the principal points of difference in the procedure to be followed by a Magistrate in trying summons-cases and warrant-cases respectively? C. U. 1907.

Difference in procedure between summons-cases and warrant-cases.—(1) In a summons case when the accused is before the Magistrate he is to be informed of the matter with which he is charged, and he must be asked whether he has to show any cause why he should not be convicted (S. 243); while in a warrant-case, no such question is to be put to the accused, but the Magistrate is to begin by hearing the case for the complainant, and if he thinks that a *prima facie* case is made out, he must frame a charge and then he shall ask the prisoner whether he pleads guilty or not guilty.

In what respect does the procedure in warrant cases differ from that in summons cases?

(2) In a summons-case it is not necessary to frame a charge (S. 242) while in a warrant-case, if after hearing the case for the prosecution the Magistrate is satisfied that a *prima facie* case has been made out, he must frame a charge.

(3) In a warrant-case the accused may not cross-examine the witnesses for the prosecution as soon as the examina-

tion-in-chief is over but he may, after the charge has been framed, recall and cross-examine the witnesses for the prosecution (S. 256) while no such privilege seems to have been conferred on an accused person in a summons-case who will have to cross-examine each witness for the prosecution as soon as his examination-in-chief is over.

C. U. 1908, 1912 (b).

(4) In a summons-case instituted upon complaint, if the complainant does not appear, the accused *must be acquitted* and if the case is instituted otherwise than upon complaints *e. g.* on a police report, a Presidency Magistrate, a Magistrate of the first class or any other Magistrate with the previous sanction of the District Magistrate may simply release the accused (*see* Ss. 247 and 249) while in a warrant-case, on non-appearance of the complainant before the charge is framed, the accused *will be discharged*, if the proceedings were instituted upon complaint and the offence is compoundable under S. 345, or is not a cognizable offence; but in other warrant-cases the Magistrate may even cause him to be arrested under a warrant and brought before him.

Discuss shortly the essential points of difference between a trial in a Summons-case and that in a Warrant Case. C. U. 1915 (a), 23 (b).

Point out the essential distinctive features of a trial in a Warrant case and a trial in a Summons case. C. U. 1924 (a), 1927 (a).

What are the material points of difference between the procedure in a Summons Case and a Warrant case? C. U. 1925 (a).

(5) A summons-case may be withdrawn by the complainant at any time before final order and on sufficient grounds (S. 248) while no similar provision is made for warrant case. But practically a warrant-case relating to a compoundable offence may be withdrawn. (Suntoke's Criminal Procedure Code).

Point out the distinctive features between the procedure in a Summons Case, a Warrant case and a Summary trial. C. U. 1926 (b)

Procedur in Summons cases.	Procedure in Warrant cases.
Procedur in Summons cases.—When the accused appears or is brought before the Magistrate, the particulars of the offence shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted; But it shall not be necessary to frame a formal charge.	**Procedure in Warrant cases.**—When the accused appears or is brought before the Magistrate, he shall hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. If necessary, he shall examine the accused. If he finds that no case against the accused has been

If the accused admits that he has committed the offence, his admission shall be recorded, and if he shows no sufficient cause why he should not be convicted he may be convicted accordingly. If the Magistrate does not convict the accused or if the accused does not make such admission, the Magistrate shall hear the complainant (if any), take evidence in support of the prosecution, hear the accused and take evidence in his defence. Then, if the Magistrate finds the accused not guilty, he shall acquit him; if he finds him guilty pass sentence on him.

If on the day of hearing the complainant does not appear, the Magistrate shall acquit the accused, unless he thinks proper to adjourn the case; if the complainant is a public servant and his personal attendance is not required, he may dispense with his attendance and proceed with the case.

The Magistrate may, on sufficient cause shown, permit the complainant to withdraw his complaint at any made out, he shall discharge the accused. But if he is of opinion that there is ground for presuming that he has committed an offence which he is competent to try and can punish adequately, he shall frame in writing a charge against the accused, read and explain it to him and ask whether he is guilty or has any defence to make. If the accused pleads guilty, he shall record the plea and convict him thereon. If the accused refuses to plead, or does not plead, or claims to be tried, the witnesses for the prosecution whom he wishes to cross-examine shall be recalled, and after cross-examination and re-examination shall be discharged. The remaining witnesses for the prosecution shall then be examined, cross-examined and re-examined. The accused shall then be called upon to enter upon his defence and produce his evidence and if the accused puts in any written statement, it shall be filed.

The Magistrate shall issue process for the attendance of witnesses whom the accused wants to summon, unless he

time before the final order, and shall acquit the accused.

In a case not instituted upon complaint a Presidency, first class or with the sanction of the District Magistrate, any other Magistrate, may stop proceedings at any stage without pronouncing any judgment, and may thereupon release the accused.

refuses the application on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such grounds shall be recorded in writing.

If the Magistrate finds the accused not guilty, he shall aquit him, if he finds him guilty, he shall pass sentence on him.

When the case has been instituted upon complaint, and the complainant does not appear on the day of hearing, and the offence is compoundable or is not a cognizable offence the accused may be discharged at any time before the charge has been framed.

CHAPTER XXII.—SUMMARY TRIALS (Ss. 260-265).

1. **Power to try summarily.**—(1) Notwithstanding anything contained in this Code,—

Briefly describe the procedure relating to summary trials. C. U. 1924(a), 1916 (a).

Give a brief narrative sketch of the general provisions relating to summary trials. C. U. 1917 (a).

(*a*) the District Magistrate,

(*b*) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(*c*) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Local Government,

may, if he or they think fit, try in a summary way all or any of the following offences :—

(*a*) offences not punishable with death, transportation or imprisonment for a term exceeding six months ;

A Magistrate tries an accused for robbery under the summary procedure and sentences him to rigorous imprisonment for 6 months. Discuss the legality of the procedure C. U. 1918 (a).

(*b*) offences ralating to weights and measures under Ss. 264, 265 and 266 of the Indian Penal Code ;

(*c*) hurt, under S. 323 of the same Code ;

(*d*) theft, under Ss. 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(*e*) dishonest misappropriation of property under S. 403 of the same Code, where the value of the property misappropriated does not exceed fifty rupees ;

(*f*) receiving or retaining stolen property under S. 411 of the same Code, where the value of such property does not exceed fifty rupees ;

Does an appeal lie from conviction under the summary procedure in any case ? C. U. 1917 (a). [See Ch. XXXI. *infra*.]

(*g*) assisting in the concealment or disposal of stolen property, under S. 414 of the same Code, where the value of such property does not exceed fifty rupees ;

(*h*) mischief, under S. 427 of the same Code ;

(*i*) house-trespass, under S. 448, and offences under Ss. 451, 453, 454, 456 and 457 of the same Code ;

A Magistrate tries an accused summarily for committing theft in respect of a watch valued at one hundred rupees. Discuss the legality of the procuder. C. U. 1919 (a).

(*j*) insult with intent to provoke a breach of the peace, under S. 504, and criminal intimidation, under S. 506, of the same Code ;

(*k*) abetment of any of the foregoing offences ;

(*l*) an attempt to commit any of the foregoing offences, when such attempt is an offence ;

(*m*) offences under S. 20 of the Cattle Trespass Act, 1871 :

Provided that no case in which a Magistrate exercises the special powers conferred by S. 34 shall be tried in a summary way.

What do you understand by

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which

is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code. (S. 260).

a summary trial? What offences may be tried summarily and by whom? C. U. 1912 (b). What are summary trials? What is the provisions of law regarding appeals from summary convictions? C. U. 1928(b). [See also S. 414 *infra*.]

Note,—It is absolutely necessary that officers who act under this Chapter should most strictly observe the formalities which the Chapter provides. (22 W. R. 28). If a Magistrate not being empowered by law in this behalf tries an offender summarily his proceedings shall be void [*Vide* S. 530 (*g*) *infra*]. Whether a case is triable summarily or not must be determined by the complaint and not by an estimate formed by the Magistrate. The procedure under this Chapter is to be followed only when a offence is plainly and directly one of those specified in this section (22 W. R. 29 : 5 C. W. N. 252 ; *contra* 6 N. W. P. H. C. R. 254). But when a Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence triable summarily, he can dispose of such case summarily and the mere fact that a complainant enumerates sections of the Penal Code relating to offences not triable summarily does not affect the juridiction of the Magistrate, unless the facts of which he really complains disclose such offences. (16 Cal. 715 ; 1 Bom. L. R. 633), No Magistrate is entitled to split up an offence, into its component parts for the purpose of giving himself summary jurisdiction. Where an accused is charged with offences, one of which is triable summarily and the other not so triable, it is not open to the Court to discard the latter charge to proceed to try the case summarily. (11 Cal. 236). A summary trial is summary only in respect of the record of its proceedings and not in respect of the proceedings themselves which should be as complete and as carefully conducted as if they were recorded at length.

(2) **Power to invest Bench of Magistrate invested with less power.**—The Local Government may confer on any Bench of Magistrates invested with

the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

(*a*) offences against the Indian Penal Code, Ss. 277 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504;

(*b*) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine;

(*c*) abetment of any of the foregoing offences ;

(*d*) an attempt to commit any of the foregoing offences, when such attempt is an offence. (S. 261).

3. **Procedure for summons and warrant cases applicable.**—(1) In trials under this Chapter, the procedure prescribed for summons-cases, shall be followed in summons-cases, and the procedure prescribed for warrant cases shall be followed in warrant-cases, except as hereinafter mentioned.

(2) **Limit of imprisonment,**—No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter. (S. 262).

4. **Record in cases where there is no appeal.**— In cases where no appeal lies the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge ; but he or they shall enter, in such form as the Local Government may direct, the following particulars :—

(*a*) the serial number ;

(*b*) the date of the commission of the offence ;

(*c*) the date of the report or complaint ;

(*d*) the name of the complainant (if any) ;

(*e*) the name, parentage and residence of the accused ;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*), clause (*f*) or clause (*g*) of sub-section (1) of S. 260 the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(*h*) the finding, and, in case of a eonviction, a brief statement of the reasons therefor:

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated. (S. 263).

5. **Record in appealable cases.**—(1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in S. 263.

(2) Such judgment shall be the only record in cases coming within this section. (S. 264).

6. (1) **Language of record and judgment.**—Records made under S. 263 and judgments recorded under S. 264 shall be written by the presiding officer, either in English or in the language of the Court, or if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother tongue.

(2) **Bench may be authorised to employ clerk,**—The Local Government may authorize any Bench of Magistrates empowered to try offences summarilly to prepare the aforesaid record or judgment by means of an officer, appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment. (S. 335).

CHAPTER XXIII.—TRIALS BEFORE HIGH COURTS AND COURTS OF SESSIONS. (Ss. 266-335).

A.—Preliminary.

1. **"High Court" defined.**—In this Chapter, except in Ss. 276 and 307, and in Chapter XVIII, the expression "High Court" means a High Court of Judicature established under the Indian High Courts Act, 1861 or the Government of India Act, 1915 and includes the Chief Courts of Oudh and Sindh, the Court of the Judicial Commissioners of the Central Provinces, and such other Courts as the Governor-General-in-Council may, by notification in the Gazette of India declare to be High Courts for the purposes of this Chapter and of Chapter XVIII. (S. 266).

2. **Trials before High Courts to be by jury.**—All trials under this Chapter before High Court shall be by jury;

and notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, the trial may if the High Court so directs, be by jury. (S. 267).

Trial in case transferred to High Court.—"When the High Court withdraws for trial before itself any case from any court other than the Court of a Presidency Magistrate it shall, except as provided in Sec. 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn." (S. 526, cl. 2 *infra*).

Therefore under the present section the High Court has a discretionary power to order a trial by jury in a case transferred to it under S. 526 from a subordinate court in which it would not have been competent to hold a trial by jury,

3. Trials before Court of Sessions to be by jury or with assessors.—All trials before Court of Session shall be either by jury, or with the aid of assessors. (S. 268)

Difference between trial by jury and trial with assessors. The trial with the aid of assessors is similar to trial by jury. The following are the points of difference :—

(1) In a trial by jury, the jury is the real tribunal but is aided by the Judge and in certain matters directed by the Judge. But in a trial with the aid of assessors, the Judge is the sole tribunal aided by the assessors and he is the sole Judge of law and fact and the responsibility of the decision rests only with him. The assessors take no part in the judgment whatever. They are not responsible for it and have nothing to do with it. (24 Mad. 523).

(2) The jury has to deliver its verdict through the foreman while each of the assessors has to state his opinion orally. The jury form a tribunal or body with a foreman, and the verdict is the verdict of the body and when there is no unanimity among the members of the body, the opinion of the majority prevails as the verdict of the body. But in the case of a trial with the aid of assessors, the assessors do not form a body and each acts and expresses his opinion individually, and the Judge is to write the opinion of each separately and record it, and is not bound by the opinions of them. (*Ibid*). Jurors are a tribunal by themselves and are assisted by, the Judge, they can deliberate together to conside their verdict and in the case of the High Court their unanimous verdict can prevail against the opinion of the presiding Judge. Assessors do not form a Court or tribunal but are in the nature of experts chosen to aid the Judge and each gives his separate opinion without consulting the other or others.

(3) The number of jurors is uneven not less than five and not more than nine as directed by the Local Government but number of assessors is not less than three and not more than four as the Judge thinks fit.

(4) The Jurors are sworn but the assessors are not sworn.

(5) If one of the jurors is absent at any stage of the trial, a new juror shall be added or the jury shall be discharged and a new jury chosen and the trial shall commence anew. But if an assessor is absent during the course of the trial, the trial shall continue with the aid of the remaining assessor or assessors.

Note.—The law makes no distinction as to the *procedure* at the trial between a trial by a jury and one with the aid of assessors except as to the summing up in the case of the former—and the manner in which the verdict in the former and the opinion in the latter are respectively taken.

If an offence triable with the aid of assessors is tried by a jury the trial shall not on that ground only be invalid and if an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, *unless the objection is taken before the court record its finding. See* S. 536 *infra.*

When the accused is convicted by the Sessions Judge in a trial by jury of offences triable with assessors, an appeal will lie from such judgment on a point of law. (26 Mad. 243).

Can the Local Govt. take away the right of trial by Jury? If so, when? C. U. 1910 (b).

4. Local Government may order trials before Court of Sessions to be by jury.—(1) The Local Government may, by order in the official Gazette direct that the trial of all offences, or of any particular class of offences, before any Court of Sessions, shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

(2) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made

to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are, and some are not, triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Sessions, with the aid of the jurors as assessors, for such of them as are not triable by jury. (S. 269).

5. **Trial before Court of Sessions to be conducted by Public Prosecutor.**—In every trial before a Court of Sessions the prosecution shall be conducted by a Public Prosecutor. (S. 270).

B.—Commencement of Proceedings.

1. **Commencement of trial.**—(1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Describe shortly a trial held with the aid of jury, beginning from the appearance of the accused before the Court of Sessions and ending with the recording of the final order. C.U 1926 (a.

(2) **Plea of guilty**—If the accused pleads guilty, the plea shall be recorded and he may be convicted thereon (S 271).

2. **Refusal to plead or claim to be tried.**—If the accused refuses to, or does not, plead, or if he claims to be tried, the court shall proceed to choose jurors or assessors as hereinafter directed and to try the case : Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit. (S. 272).

3. **Entry on unsustainable charges.**—(1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) **Effect of entry.**—Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be. (S. 273).

C.—Choosing a Jury.

Describe the procedure for choosing a jury in trials before a Court of Sessions. C.U. 1927 (a).

1. **Number of Jury.**—(1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Sessions the jury shall consist of such uneven number, not being less then five or more than nine, as the Local Government by order applicable to any particular district or to any particular class of offences in that district may direct. Provided that, where any accused person is charged with an offence punishable with death the jury shall consist of not less than seven persons and, if praticable, of nine persons. (S. 274).

A. an Indian British subject is, on the complaint of X, a European British subject, committed by a Presidency Magistrate to take his trial before the High Court. At what stage can A put forward his claim to be tried as an Indian British subject, and with what consequence? C.U. 1927 (a).

2. **Jury for trial of European and Indian British subjects and others.**—(1) In a trial by jury before the High Court or Court of Sessions of a person who has been found under the provisions of this Code to be a European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of a European British subject, of person who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be a European (other than a European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans. (S. 275).

Note.—Such claim must be made before a committing Magistrate. (29 C. W' N. 384.)

3. **Jurors to be chosen by lot.**—The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct :

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in

such Court in respect to the choosing of jurors shall be followed ;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present ;

thirdly, in a trial before any High Court in the town which is the usual place of sitting of such High Court.—

(*a*) if the accused person is charged with having committed an offence punishable with death or

(*b*) if in any other case a Judge of the High Court so directs.

the jurors shall be chosen from the special jury list hereinafter prescribed ; and

fourthly. in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in S. 325. (S. 276).

4. (1) **Name of jurors to be called**—As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

(2) **Objection to jurors.**—Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated : Provided that in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged. (S. 277).

State the grounds of objection that may be taken to a jury C. U. 1914 (a).

5. **Grounds of objection.**—Any objection taken to a juror on any of the following grounds, it made out to the satisfaction of the Court, shall be allowed :—

(*a*) some presumed or actual partiality in the juror ;

(*b*) some personal grounds, such as alienage, deficiency in the qualification required by any

law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs ;

(*d*) his holding any office in or under the Court ;

(*e*) his executing any duties of police, or being entrusted with police-duties ;

(*f*) his having been convicted of any offence which, in the opinion of the court, renders him unfit to serve on the jury :

(*g*) his inability to understand the language in which the evidence is given, or when such evidence is interpreted the language in which it is interpreted ;

(*h*) any other circumstances which, in the opinion of the Court, render him improper as a juror. (S. 278).

6. (1) **Decision of objection**—Every objection taken to a juror shall be decided by the Court and such decision shall be recorded and be final.

(2) **Supply of place of juror.**—If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summon and chosen in manner provided by S. 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury. Provided that no objection to such juror or other person is taken under S. 278 and allowed. (S. 279).

7. **Foreman of jury.**—(1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge think reasonable, agree in the appointment of a foreman, he shall be appointed by the Court. (S. 280).

8. **Swearing of jurors.**—When the foreman has been appointed the jurors shall be sworn under the Indian Oaths Act, 1873. (S. 281).

9. **Procedure when juror ceases to attend etc.**—(1) If, in the course of a trial by jury at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(2) In each of such cases the trial shall commence anew. (S. 282).

10. **Discharge of jury in case of sickness of prisoner.**—The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar. (S. 283),

D.—Choosing Assessors.

1. **Assessors how chosen.**—When the trial is to be held with the aid of assessors, not less than three and, if practicable, four shall be chosen, from the persons summoned to act as such. (S. 284).

1A. **Assessors for trial of European and Indian British subjects and others.**—(1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be a European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who are Europeans or

Americans or, in the case of Indian British subjects, be Indians.

(2) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be a European (other that a Europeon British subject) or an American, all the assessors shall, if practicable and if such European or American before the first assessor is chosen so requires, be person who are Europeans or Americans. (S. 284-A).

2. **Procedure when assessor is unable to attend.**—(1) If in the course of trial with the aid of assessors, at any time bofore the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors. (S. 285).

DD.—Joint trials.

1. **Trial of European or Indian British subject or European or American jointly accused with others.**—In any case in which a European or an American is accused jointly with a person not being a European or an American or an Indian British subject is accused jointly with a person not being an Indian, and such European, Indian British subject or American is committed for trial before a Court of Sessions, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of S. 275 or S. 284A and is so tried, and the other person accused requires to be tried separately such other person shall be tried separately in accordance with the provisions of this chapter. (S. 285-A).

E.—Trial to Close of Cases for Prosecution and Defence.

1. **Opening case for prosecution.**—(1) When the jurors or assessors have been chosen, the

prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

(2) **Examination of witnesses.**—The prosecutor shall then examine his witnesses. (S. 286).

2. **Examination of accused before Magistrate to be evidence.**—The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor as evidence. (S. 287).

3. **Evidence given at preliminany inquiry admissible.**—The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872. (S. 288).

4. **Procedure after exmination of witnesses for prosecution.**—When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case ; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused, or any one of several accused says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed

the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence. (S. 289).

5. **Defence.**—The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case. (S. 290).

6. **Right of accused as to examination and summoning of witnesses.**—The accused shall be allowed to examine any witness not previously named by him if such witness is in attendance; but he shall not, except as provided in Ss. 211 and 231, be entitled of right to have any witness summoned, other than the winnesses named in the list delivered to the Magistrate by whom he was committed for trial. (S. 291).

Under what circumstances does the prosecution in a Sessions trial obtain a right of reply? C. U. 1908.

7. **Prosecutor's right of reply.**—The prosecutor shall be entitled to reply—

(*a*) if the accused or any of the accused adduces any oral evidence; or

(*b*) with the permission of the Court, on a point of law; or

(*c*) with the permision of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that, in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced (S. 292)

8. **View by jury or assessors.**—(1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other places in which any other transaction material to the trial is alleged to

have occured, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court. (S. 293).

9. **When juror or assessor may be examined.**—If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness. (S. 294).

10. **Jury or assessors to attend at adjourned sitting.**—If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial. (S. 295).

11. **Locking up jury.**—The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day ; and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes. (S. 296).

F.—Conclusion of trial in cases tried by jury.

1. **Charge to jury.**—In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided. (S. 297).

During the trial of a prisoner, the Session Judge did not call on the prisoner to enter on his defence nor did he charge the jury as re-

Note.—In cases tried by jury the Code does not contemplate the reception of a verdict from the jury without their

quired by S. 297 of the Code What is your view of these irregularities? C.U. 1914 (b).

having the assistance of a summing up by the Judge, since a careful summing up may often change the hasty and superficial impressions of jury. In summing up, the judge should make a full, distinct and detailed statement of the evidence on both sides with such advice as to the legal bearing of that evidence and the weight which properly attaches to several parts of it, as a sound judicial discretion would suggest and in so far as a judge does not do this, he commits an error in law.

In a trial by jury a question arises whether the facts proved amount to murder or culpable homicide. The Judge in charging the Jury tells them to find out the distinction between the two offences for themselves. Discuss the legality of the procedure. C.U. 1917 (b)

It is the duty of the judge to state to the jury what are the principal points in the evidence and how they bear for or against the prisoner—in short, to render the jury every assistance in his power towards coming to a right conclusion. (6 W, R. Cr. 72). But it is for the jury to judge whether certain evidence is credible or not and the Judge has no right to pronounce his own jndgment on the credibility of the evidence and to withdraw the consideration of the due weight to be given to the evidence, from the jury, (16 W. R. Cr. 20).

It is the duty of a Judge to give direction upon the law to the jury so far as to make them understand the law as bearing upon the facts and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection. (8 Cal. 739). Under this section the Judge must explain to the jury all the essential elements of the offence with which the prisoner is charged. An omission to do so is not a mere irregularity curable by S. 537. It is a failure to comply with an express provision of the law and will vitiate the conviction.

What is the meaning of the expression "misdirection to the Jury." May the Judge in summing up to the Jury, express his opinion on any questions of fact relevant to the proceeding? A Judge tells the jury that in his opinion

The responsibility of laying down the law for the guidance of the jury rests entirely with the Judge. Where therefore a Judge instead of laying down the law told the jury that the law on the point had been explained by the pleaders on both sides in their address it was *held* that a verdict thus arrived at by the jury in the absence of any such direction on the law by which they should be guided

cannot be accepted as valid. (29 Cal. 379). The jury must be told what the law is and what constitutes the offence charged and what matters must be proved to their satisfaction to constitute that offence. It is incumbent on the Judge to explain the law relating to the particular offence charged against the accused in order to enable the jury to apply the law to the special facts of the case. A mere mention of the sections of the Penal Code under which the accused were charged is insufficient. (25 Cal. 561, 736). Merely to read out to the jury the section of the Penal Code, applicable to the case is not explanation of the law sufficient for the guidance of the jury. (4 C. W. N. 193). Even when the jury has already been addressed on a question of law by the pleaders on both sides, it is the duty of the Judge to lay down the law by which the jury is to be guided. Omission to do so is a misdirection and the conviction is liable to be quashed. A Judge ought not merely to leave with the jury a copy of the Penal Code. (11 Cal. 164).

certain facts in the case lead to one conclusion alone, and to no other and directs them to find accordingly. Is this a misdirection? C. U. 1909.

2. **Duty of Judge.**—(1) In such cases it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or, the propriety of questions asked by or on behalf of the parties; and in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

After a jury has been chosen in a Sessions trial, what are the duties of the presiding Judge down to the close of the trial? C. U. 1903.

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors,

In cases tried by jury what are the respective duties of the Jury and the Judge in a Sessions trial? C. U. 1907, 1902 (a). 1919 (b), 1918 (b).

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding. (S. 298).

Illustrations.—(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible. It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved. (*b*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed. It is the duty of the Judge to decide whether the original has been lost or destroyed.

Describe shortly the procedure at the Sessions trial with special reference to the functions of Judge and Jury C. U. 1908.

3. **Duty of jury.**—It is the duty of the jury—

(*a*) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not ;

State the duty of the Judge in cases tried by Jury. C. U. 1924(a), 1923(a).

(*c*) to decide all questions which according to law are to be deemed questions of fact ;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning. (S. 299).

State the duty of the Jury in a Sessions trial. C. U. 1924 (a), 21 (a), 20 (b), 1914 (a).

What are the respective duties of the Judge and the Jury in a trial

Illustrations.—(*a*) A is tried for the murder of B. It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted. It is

the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it. (*b*) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence. Each of these is a duestion for the jury.

held with the aid of a Jury ? C.U 1925 (a), 1925 (b), 1926 (b), 1928 (a).

4. **Retirement to consider.**—In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to. or hold any communication with, any member of such jury. (S. 300).

5. **Delivery of verdict.**—When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority. (S. 301).

6. **Procedure where jury differ.**—If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous. (S. 302).

7. **(1) Verdict to be given on each charge. Judge may question jury.**—Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Questions and answers to be recorded.—Such questions and the answers to them shall be recorded. (S. 303).

Note.—It is only when it is necessary, in order to ascertain what the verdiot of the jury really is that the Judge is justified in putting questions to the Jury. There is no provision in the Code which empowers the judge to question the jury as to their reasons for a verdict where there is nothing ambiguous in the verdict itself and no

lurking uncertainty in the minds of the jury themselves regarding it. This section limits the Judge's power to question to cases in which it is necessary to ascertain what the verdict of the jury is—that is, where the verdict being delivered is ambiguous in terms or their meaning is not clear. (28 Bom. 412 : 14 W. R. 59 ; 7 C. W. N. 135 ; 36 Mad. 585 ; 21 W. R. 1 ; 20 W. R. 50. *Contra* 1 C. L. R. 275).

8. **Amending verdict.**—When by accident or mistake wrong verdict is delivered, the jury may before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended. (S. 304).

Note.—The section obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury and does not apply to a case where the jury owing to a misunderstanding of the law arrive at a wrong conclusion, but there is no accident or mistake in the delivery of the verdict (28 Bom. 412). The section provides for an amendment of a wrong verdict delivered by accident or mistake but clearly contemplates that such a verdict is amended only *before* or *immediately after* it is recorded, in other words before the jurors have left the court and while they are still under the observance of the presiding Judge The reason for this restriction is obvious, for once the jurors have left the court, they are liable to outside influences and it would be in the highest degree dangerous thereafter to accept statements to modify the verdict. (Sohoni, 721).

9. **Verdict in High Court when to prevail.**—(1) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall, so inform the Judge.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall after the lapse of such time as he thinks reasonable, discharge the jury. (S. 305).

How far is the verdict of the Jury at a Sessions trial (a) in the High Court (b) in the Mofussal, binding upon the presiding Judge? C. U. 1926 (b).

Note.—In a trial in the High Court Sessions, two cases may arise under this section—(1) the jury may be unanimous in their verdict or (2) the jury may be divided. Now the first may be sub-divided into two : (1*a*) the Judge may agree with the unanimous verdict or (1*b*) he may disagree. In both these cases the Judge will be bound to give judgment according to the unanimous verdict. In case (2) the jury may be divided and either (2*c*) the majority of the jury may be six or more but at least six or (2*d*) the majority may be less than six, as for example, when jury is divided by five to four. In case (2*c*) if the Judge agrees with the verdict of of the six or more he must give judgement according to that verdict and if he disagrees with their verdict he must discharge the jury and try the prisoner again with another jury. In case (2*d*) the Judge may ask the jury to reconsider but if still the jury is divided by five to four, then, whether the Judge agrees with the verdict of the majority of five or not, he must discharge the jury and try the prisoner again with another jury. Thus, in the High Court the verdict of a majority of the jury will prevail if two conditions are fulfilled *viz.* the majority must be at least six and the Judge must agree with the majority. (Suntoke, 391).

10. Verdict in Court of Session when to prevail.—(1) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of S. 562, pass sentence on him according to law. (S. 306).

State the procedure where the Sessions Judge

11. Procedure where Sessions Judge disagrees with verdict.—(1) If in any such case the Judge disagrees with the verdict of the jurors, or of a

disagrees with the verdict of the Jury. C.U. 1921 (a), 1914 (a). State the procedure when a Sessions Judge disagrees with the verdict of the jury. What is the procedure when in a case tried before a High Court, the Judge disagrees with the verdict of the Jury? C. U. 1921 (suppl), 1916 (b).

majority of the jurors on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed and in such case, if the accused is further charged under the provisions of S. 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it ; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session. (S. 307).

G—Re-trial of Accused after Discharge of jury.

1. Re-trial of accused after discharge of jury.—Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge and such entry shall operate as an acquittal. (S. 308).

H.—Conclusion of Trial in Cases tried with Assessors.

1. Delivery of opinions of assessors.—(1) When, in a case tried with the aid of assessors, the case or the defence and the prosecutor's reply (if any) are

concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally on all the charges on which the accused has been tried and shall record such opinion and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are. All such questions and the answers to them shall be recorded.

Judgment.—The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

(3) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of S. 562, pass sentence on him according to law. (S. 309).

1.—Procedure in case of Previous Conviction.

What is the procedure to be followed in a Jury trial if a previous conviction is to be proved against the accused? C. U. 1925 (b)

1. **Procedure in case of previous conviction.** In the case of a trial by a jury or with the aid of assessors when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure prescribed by the foregoing provisions of this Chapter shall be modified as follows, namely :—

(*a*) Such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon unless and until,

(*i*) he has been convicted of the subsequent offence, or

(*ii*) the jury have delivered their verdict, or the opinions of the assessors have been recorded, on the charge of the subsequent offence.

(*b*) In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction. (S. 310).

2. **When evidence of previous conviction may be given.**—Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872. (S. 311).

J.—List of Jurors for High Court and summoning Jurors for that Court.

1. **Number of special jurors.**—The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors' list. Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed. (S. 312).

2. **List of common and special jurors.**—(1) The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribe, prepare—

(*a*) a list of all persons liable to serve as common jurors ; and

(*b*) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(4) The Governor-General-in-Council or the Local Government in the case of the High Court at Fort William in Bengal, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

(5) **Discretion of officer preparing lists.**—The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision. (S. 313).

3. Publication of lists, preliminary and revised.—(1) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

(2) Revised lists of persons liable to serve as common juror and special jurors, respectively signed as aforesaid shall be published once in the local official Gazette before the first day of May next after their preparation

(3) Copies of the said lists shall be affixed to some conspicuous part of the court-house. (S. 314).

4. Number of jurors to be summoned—(1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session in the town which is the usual place of sitting of each High Court as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary.

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) **Supplementary summons.**—If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions. (S. 315).

5. Summoning jurors outside the place of sitting of High Court.—Whenever a High Court has given notice of its intention to hold sittings at any place outside the town which is the usual place of sitting of such High Court for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Sessions. (S. 316).

6. Military jurors.—(1) In addition to the persons so summoned as jurors, the said Court of Session shall, if

it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army or Air force resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code ; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent official duty, or for any other special official reason. (S. 317).

7. **Failure of jurors to attend.**—Any person summoned under S. 315, S. 316 or S. 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine, as he thinks fit ; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid. Provided that the Court may in its discretion remit any fine or imprisonment so imposed. (S. 318).

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

1. **Liability to serve as jurors or assessors.**—All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the Local Government, on consideration of local circumstances has fixed any smaller area in this behalf, within the area so fixed. (S. 319).

2. **Exemptions.**—The following persons are exempted from liability to serve as jurors or assessors namely :—

(*a*) officers in civil employ superior in rank to a District Magistrate ;

(*aa*) members of either chamber of the Indian Legislature and members of a Legislative Council constituted under the Government of India Act;
(*b*) salaried Judges;
(*c*) Commissioners and Collectors of Revenue or Customs;
(*d*) police-officers and persons engaged in the Preventive Service in the Customs Department;
(*e*) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
(*f*) persons actually officiating as priests or ministers of their respective religions;
(*g*) persons in Her Majesty's Army, or Air Force, except when by any law in force for the time being, they are specially made liable to serve as jurors or assessors;
(*h*) surgeons and others who openly and constantly practise the medical profession;
(*i*) legal practitioner (as defined by the Legal Practitioner's Act, 1879), in actual practice;
(*j*) persons employed in the Post-Office and Telegraph Departments;
(*k*) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, Ss. 640 and 641;
(*l*) other persons exempted by the Local Government from liability to serve as jurors or assessors. (S. 320).

3. **List of jurors and assessors.**—(1) The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors and assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such and not likely to be successfully objected to under S. 278, clauses (*b*) to (*h*), both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person and, if the person is a European or an American, the list shall mention the race to which he belongs. (S. 321).

4. **Publication of list.**—Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-house of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside. (S. 322).

5. **Objections to list.**—To every such copy or extract shall be sub-joined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the sessions court-house, and at a time to be mentioned in the notice. (S. 323).

6. **Revision of list.**—(1) For hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, or as an assessor, who may establish his right to any exemption from service given by S. 320 and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Session Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

(6) **Annual revision of list.**—The list so prepare and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared. (S. 324).

7. **Preparation of list of special jurors.**—In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury. (S. 325).

8. **District Magistrate to summon to jurors and assessors.**—(1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trial with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial, and including, where any accused person is a European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

(3) Where the accused required and is entitled to be tried under the provisions of S. 275, there shall be chosen

by lot, in the manner prescribed by or under S. 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained.

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under S. 320.

(4) Where, under the proviso to sub-section (3), the Court proposes to summon as a juror any person in His Majesty's Army the provisions of S. 317 shall apply in like manner as they apply for the purposes of the summoning of military jurors for a trial under S. 316. (S. 326).

9. **Power to summon another set of jurors or assessors.**—The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in S. 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive or whenever for other reasons such direction is found to be necessary. (S. 327).

10. **Forms and contents of summons.**—Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified. (S. 328).

11. **When Government or Railway servant may be excused.**—When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of office in which he is employed that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public. (S.329).

12. Court may excuse ettendance of juror or assessor.—(1) The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

(2) **Court may relieve special jurors from liability to serve again as jurors for twelve months.**— The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months. (S. 330).

13. List of jurors and assessors attending— (1) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

(2) Such list shall be kept with the list of the jurors and assessors as revised under S. 234.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentined in the list prepared under this section. (S. 331).

14. Penalty for non- attendance of juror or assessor.—(1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any movable property belonging such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term. (S. 332).

L.—Special Provisions for High Court.

1. Power of advocate- General to stay prosecution.—At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge ; and thereupon all proceeding on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs. (S. 333).

Note.—When the Advocate-General under this section stays a prosecution he is said to enter a *nolle prosequi (lit.* unwillling to prosecute).

2. Time of holding sittings.—For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints. (S. 334).

3. Place of holding sittings.—(1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Goverment in the case of the other High Courts, may direct.

(2) But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Covernment, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Notice of sittings.—Such officers as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court. (S. 335).

Trial before Court of Session and trial before High Court—Difference in procedure.—Procedure in a trial before a High Court is similar to that of a jury-trial in a Court of Session except in the following respects :—

(1) The jury shall consist of nine persons in a trial before the High Court and of an uneven number

not less than five and not more than nine, in a trial before the Court of Session.*

(2) In a trial before High Court objections taken to jurors *without grounds* shall be allowed to the number of eight on behalf of the Crown and on behalf of the accused.—No such privilege is given in a trial before a Court of Session.

(3) When it appears to the High Court, at any time before the commencement of the trial, that any charge or any part thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect. Such entry shall have the effect of staying proceedings upon the charge or portion of the charge as the case may be.

(4) In High Court if the Judge disagrees with the verdict of the majority *or* if six of the jurors be not unanimous the Judge shall at once discharge the jury. When the jury is discharged, the accused shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case he shall acquit him.

(5) In High Court the Advocate-General, may, before the return of verdict inform the Court that he will not further prosecute the accused upon the charge and thereupon all proceeding shall be stayed and the accused shall be discharged but not acquitted unless directed by the Judge.

Describe brieflya criminal trial. before the High Court Sessions. C. U. 1911 (a).

Procedure in trials before Courts of Session.—When the Court is ready to commence the trial the accused shall appear or be brought before it and the charge shall be

Procedure in trials before High Court—When the Court is ready to commence the trial the accused shall appear or be brought before it and the charge shall be read out

* But where any accused person is charged with an offence punishable with death, the jury shall consist of not less than *seven* persons, and if practicable of *nine* persons. (Proviso to S. 274).

Briefly describe the procedure of a trial before a Sessions Judge with the aid of assessors. C. U. 1916 (b).

In a case of trial by the Court of Session state briefly the various steps which are taken from the time the Magistrate takes cognizance of the offence till the final judgment. C.U. 1910 (a).

Briefly describe a jury trial before a court of Session, indicating the main features and stages. C.U. 1923 (a).

Describe briefly the procedure in a trial by jury. C.U, 1923 (b).

read out and explained to him, and he shall be asked whether he is guilty or claims to be tried. If he pleads guilty, the plea shall be recorded and he may be convicted thereon. If he refuses to or does not, plead, or if he claims to be tried, the Court shall choose jurors or assessors as the case may be. When the jurors have been chosen, they shall appoint one of their number to be the foreman. They shall then be sworn. The Court shall then proceed to try the case.	and explained to him, and he shall be asked whether he is guilty or claims to be tried. If he pleads guilty, the plea shall be recorded and he may be convicted thereon. If he refuses to or does not, plead, or if he claims to be tried, the Court shall choose jurors. When they have been chosen, they shall appoint one of their number to be the foreman. They shall then be sworn. The Court shall then proceed to try the case.
The proseoutor shall open his case by reading the description of the offence, stating shortly by what evidence he expects to prove the guilt. He shall then examine his witnesses. The examination of the accused by the committing Magistrate shall be tendered by the prosecutor and read as evidence.	The prosecutor shall open his case by reading the description of the offence, and stating shortly by what evidence he expects to prove the guilt. He shall then examine his witnesses. The examination of the accused by the committing Magistrate shall be tendered by the prosecutor and read as evidence.
After this, and the examination (if any) of the accused, he shall be asked whether he means to adduoe. If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no	After this, and the examination (if any) of the accused, he shall be asked whether he means to adduce evidence. If he says that he does not, the prosecutor may sum up his case; and, if the court considers that there is no evi-

evidence that he committed the offence, it may direct the jury to return a verdict of not guilty. (If the case is tried with the aid of assessors, record a finding of not guilty) If he says that he means to adduce evidence and the Court considers that there is no evidence that he committed the offence, it may direct the jury to return a verdict of not guilty. (If the case is tried with the aid of assessors, record a finding of not guilty.)

dence that he committed the offence, it may direct the jury to return a verdict of not guilty. If he says that he means to adduce evidence and the Court considers that there is no evidence that he committed the offence, it may direct the jury to return a verdict of not guilty.

If he says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if,on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that he committed the offence, the Court shall call on him to enter on his defence.

If he says that he means to adduce evidence and the Court considers that there is evidence that he committed the offence, or if, on his saying that the does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that he committed the offence, the Court shall call on him to enter on his defence.

The accused may then open his case, stating the facts of law on which he intends to rely, and making comments on the evidence for the prosecution. He may then examine his witnesses (if any) and after

The accused may then open his case, stating the facts or law on which he intends to rely, and making comments on the evidence for the prosecution. He may then examine his witnesses (if any) and after

their cross-examination and re-examination may sum up his case.

If the accused has adduced any evidence, the prosecutor shall be entitled to reply.

After this—(1) *if the case is tried with the did of assessors*, the judge may sum up the evidence for the prosecution and defence and shall then require each assessor to state his opinion orally, and shall record it. He shall then give judgment without being bound to conform to the opinions of the assessors.

(ii) *if the case is tried by jury*, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence and laying down the law by which the jury are to be guided. After the Judge has finished his charge, the jury may retire to consider their verdict. When the jury have considered their verdict, the foreman shall inform the judge what is their verdict or of a majority. If the jury are not unanimous, the Judge

their cross-examination and re-examination may sum up his case.

If the accused has adduced any evidence the prosecutor shall be entitled to reply.

After this the Court shall proceed to charge the jury, summing up the evidence, and laying down the law by which the jury are to be guided. After the judge has finished his charge. the jury may retire to consider their verdict. When the jury have considered their verdict, the foreman shall inform the judge what is their verdict, or of a majority. If the jury are not unanimous, the judge may require them to retire for further consideration.

may require them to retire for further consideration. After a reasonable period the jury may deliver their verdict although they are not unanimous.

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If the Judge agrees with the verdict of the jurors or of a majority of them, he shall give judgment accordingly.

When the jury are unanimous or when as many as six are of one opinion and the judge agrees with them he shall give judgment accordingly. If the disagrees with the majority, or the number of jurors who agree in opinion, is less than six, he shall discharge the jury.

If he disagrees and is of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit it accordingly, recording the grounds of his opinion. The High Court may exercise the powers of an appellate Court, and acquit or convict the accused.

When they jury is discharged the accused shall be tried by another jury, unless the Judge considers that he should not be retried in which case he shall acquit him.

CHAPTER XXIV.—GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS. (S. 337-352).

1 Tender of pardon to accomplice—(1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under S. 211 of the Indian

What do you understand by the term 'Accomplice'? What are the provisions of

the law relating to tender of pardon to an accomplice? How may such pardon be forfeited? C.U. 1918 (b). What is the procedure for tendering pardon to an accomplice? In what case and by whom may such pardon be endered? C.U. 1928 (a)

Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely Ss. 216A, 369, 401, 435 and 477A, the District Magistrate a Presidency Magistrate, a Sub-divisional Magistrate or any Magistrate of the first class may at any stage of the investigation or inquiry into or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

Provided that, where the offence is under inquiry or trial, nc Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigtion, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

(1A) Every Magistrate who tenders a pardon under sub-sec. (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record: Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(2) Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-sec. (2) the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable

grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be.

(3) Such person, unless he is already on bail shall be detained in custody until the termination of the trial. (S. 337).

2. **Power to direct tender of pardon.**—At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person. (S. 308).

3. **Commitment of person to whom pardon has been tendered**—(1) Where a pardon has been tendered under S. 337 or S. 338, and the Public Prosecutor certifies that in his opinion any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condittion on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who had accepted a tender of pardon may be given in evidence against him at such trial.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court. (S. 339).

3A. **Procedure in trial of person under S. 339**—(1) The Court trying under S. 339 a person who has accepted a tender of pardon shall—

(a) if the court is a High Court or Court of Session. before the charge is read out and explained to the accused under S. 271, sub-sec. (1), and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has comlied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial and the jury or the Court with the aid of the assessors, or the Magistrate as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon and if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal. (S. 339A).

4. **Right of person against whom proceedings are instituted to be defended and his competency to be a witness.**—(1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under S 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under S. 552, may offer himself as a witness in such proceedings. (S. 340).

5. **Procedure where accused does not understand proceeding.**—If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial ; and in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results

in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit. (S. 341).

6. **Power to examine the accused.**—(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused. (S. 342).

When can an accused person be examined by the Court? What are the provisions of English Law on the point? What is your opinion about the propriety of such examination? C.U. 1921(b). What power has a criminal court to examine the accused? C.U. 1901. When has a criminal court power to examine an accused person? Can it cross-examine? C.U. 1926. When and to what extent may the court examine the accused during a trial? C.U. 1908. When and for what purpose may a Magistrate examine an accused person? C.U. 1909, 1916 (b). When may a Magistrate examine an ac-

Note.—The object of empowering a Judge to examine an accused person is to give the accused an opportunity of explaining any circumstances which may tend to criminate him and thus to enable the Court in case where the accused is undefended, to examine the witnesses in his interest. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. Again the Court is not competent to subject the accused to severe cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself; but only for the purpose of ascertaining from the accused how he is able to meet facts standing in

cused person? When is a Magistrate bound to do so? C.U.1915(a).

evidence against him so that these fact should not stand against him unexplained. (1 C. L. R.436).

Omission to examine the accused.—The provision of this section are not permissive but imperative and the accused must be afforded an opportunity for the purpose of explaining any circumstance appearing in the evidence against him. (1 Cal. 766; 41 Cal. 743; 10 Bom. L. R. 201). Omission to exmine the accused is not a mere error of form; it is a defect not cured by S. 537 *infra* and if the Court convicts the accused without examining him, the conviction is liable to be set aside. (2 Weir 405; 49 Cal. 1075; 45 Mad. 820).

Examination of accused how recorded.—See S. 364 *infra*

7. **No influence to be used to induce disclosures.**—Except as provided in Ss. 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge. (S. 343).

8. **Power to postpone or adjourn proceedings.**—(1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation:—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand. (S. 344).

9. Compounding offences.—(1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

C. U. 1884.

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt . .	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour.	374	The person compelled to labour.
Mischief when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass . .	447	The person in possession of the property trespassed upon.
House trespass . .	448	The person in possession of the property trespassed upon.
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.

(a) A, on the complaint of B, a husband is being tried before a Magistrate of the first class on a charge of adultery.
(b) A, on the complaint of B, a husband. is being tried in a Court of Sessions on a charge of adultery.
Can B Compound the offence in either of the above instances? If so state the restrictions, if any, on B's power to composition in each case.
C.U. 1913(b)

A criminal proceeding is instituted by X, who is in possession of certain property against Y for criminal trespass thereon: the offence is compounded. What, if any is the effect? C. U. 1901.

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Adultery . . .	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	
Defamation . .	500	The person defamed.
Printing or engraving matter knowing it to be defamatory	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the Sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence

is pending, be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person in secret.	346	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property.	304	The owner of the property misappropriated.
Cheating . . .	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	The person cheated.
Cheating by personation.	419	Ditto.

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	The person cheated.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is. caused by such use.
Counterfeiting a trade or property marked used by another.	483	The person whose trade or property-mark is counterfeited.
Knowingly selling or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

What is a "compoundable offence"? What is the legal effect of a valid composition? C.U. 1923 (b)

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.

(5A) A High Court acting in the exercise of its powers of revision under S. 439 may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

C. U. 1889.

(7) No offence shall be compounded except as provided by this section. (S. 345).

10. **Procedure of Provincial Magistrate in cases which he cannot dispose of.**—(1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

A second class Magistrate on the conclusion of a trial is of opinion that his powers do not permit him to adequately punish the accused. State the procedure to be followed in the case C.U. 1915 (b), 1928 (a).

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or

refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial. (S. 346).

What Magistrates are competent to commit an accused for trial to the Court of Sessions? What is the procedure to be adopted by a Magistrate who is not so competent but who is of opinion that the case he is hearing ought to be committed? C.U.1916(a).

11. **Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed.**—(1) If in any inquiry before a Magistrate, or in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under S. 346. (S. 347).

12. **Trial of persons previously convicted of offences against coinage, stamp-law or property.**—(1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall, if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused, be committed to the Court of Session or High Court, as the case may be, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

Provided that, if any Magistrate in the district has been invested with powers under S. 30, the case may be transferred to him instead of being committed to the Court of Session.

(2) When any person is committed to the Court of Session or High Court under sub-sec. (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under S. 209, (S. 348).

13. **Procedure when Magistrate cannot pass sentence sufficiently severe.**—(1) Whenever a

Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under S. 106, he may record the opinion and submit his proceedings, and forward the accused to the District Magistrate or Subdivisonal Magistrate to whom he is subordinate.

(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-sec. (1) in regard to any of such accused he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law : Provided that he shall not inflict a punishment more severe than he is empowered to inflict under Ss. 32 and 33. (S. 349).

A Magistrate after holding a trial in part ceases to hold office, and is succeeded by another Magistrate. State the procedure to be followed in this ca• C.U.191

14. **Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.**—(1) Whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial ceases to exercise jurisdiction therein and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he man re-summon the witnesses and recommence the inquiry or trial.

Provided as follows :—

(*a*) in any trial the accused may, when the second Magistrate commences his proceedings, demand

that the witnesses or any of them be re-summoned and re-heard ;

(*b*) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under S. 346, or in which proceedings have been submitted to a superior Magistrate under S. 349.

(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-sec. (1) (S. 350).

Note.—This section applies only to Magistrates. It is not applicable to Sessions Judges nor to Bench of Magistrates. (21 W. R. 47; 28 Cal. 194). This section applies to proceedings under Chapter VIII and under Sec. 145 as well as to enquiries preliminary to commitments. But it does not apply to cases of further enquiry directed under S. 437.

19A. **Changes in constitution of Benches**.—No order or judgment of a Bench of Magistrate shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under Ss. 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings. (S. 350-A).

15. **Detention of offenders attending Court**.—(1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial

of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard. (S. 351).

16. **Courts to be open.**—The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them: Provided that presiding Judge or Magistrate may if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court. (S. 352).

CHAPTER XXV.—MODE OF TAKING & RECORDING EVIDENCE IN INQUIRIES & TRIALS. (SS. 353-365)

1. **Evidence to be taken in presence of accused.**—Except as otherwise expressly provided, all evidence taken under Chapters XVIII. XX, XXI, XXII and XXIII shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in presence of his pleader. (S. 353).

2. **Manner of recording evidence outside presidency towns.**—In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner. (S. 354).

3. **Record in summons-cases, and in trials of certain offences by first and second class Magistrates.**—(1) In summons-cases tried before a

Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in sub-sec. (1) of S. 260, clauses (*b*) to (*m*), both inclusive, when tried by a Magistrate of the first or second class and in all proceedings under S. 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. (S. 355).

4. (1) **Record in other cases outside presidency-towns**—In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

(2) **Evidence given in English.**—When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence and an authenticated

translation of such evidence in the language of the Court or in English shall form part of the record.

(3) **Memorandum when evidence not taken down by the Magistrate or Judge himself.**—In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge he shall, as the examination of each witness proceeds make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it. (S. 356).

5. **Language of record of evidence.**—(1) The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in S. 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record: Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue. (S. 357).

6. **Option to Magistrate in cases under S. 355.**—In cases of the kind mentioned in S. 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in S. 356, or, if within the local limits of the jurisdiction of such Magistrate the local Government has made the order referred

to in S. 357, in the manner provided in the same section. (S. 358).

7. **Mode of recording evidence under S. 356 or 357.**—(1) Evidence taken under S. 356 or S. 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer. (S. 359).

8. **Procedure in regard to such evidence when completed.**—(1) As the evidence of each witness taken under S. 356 or S. 357 is completed, it shall be read over to him in the presence of the accused if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands. (S. 360).

9. **Interpretation of evidence to accused or his pleader.**—(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary. (S. 361).

10. **Record of evidence in Presidency Magistrates' Courts.**—(1) In every case tried by a Presidency Magistrate in which an appeal lies, such Magistrate shall either take down evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

(2A) In every case referred to in sub-sec. (1), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record.

(3) Sentences passed under S. 35 on the same occasion shall, for the purposes of this section be considered as one sentence unless they are sentences of imprisonment ordered to run concurrently.

(4) In cases other than those specified in sub-sec. (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge. (S. 362).

11. **Remarks respecting demeanour of witness.**—When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination. (S. 363).

12 **Examination of accused how recorded.**—(1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of Oudh the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full,

How is the record of the examination of an accused person kept? Is any and what

"certificate" necessary to be recorded by the Magistrate? Is absence of the certificate fatal to the admission of the statement as evidence against the accused? Can it be remedied? It so how? C. U. 1909.

in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge or such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language: and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused porson under S. 263 or in the course of a trial held by a Presidency Magistrate. (S. 364).

Note.—The rules laid down in this section are applicable to the examination of an accused under S. 342 *supra*. (4 Bom L. R. 461 : 10 Mad. 295). This section and S. 164 should be read with S. 533 which deals with the effect of non-compliance with the provisions of this section and of S. 164.

13. **Record of evidence in High Court.**— Every High Court established by Royal Charter, and the Chief Court of Oudh shall, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court and the evidence

shall be taken down in accordance with such rule (S. 365).

CHAPTER XXVI.—JUDGMENT. (SS. 366-373)

1. **Mode of delivering judgment.**—(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained,—

(*a*) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(*b*) in the language of the Court, or in some other language which the accused or his pleader understands :

Provided that the whole judgment shall be read out by the presiding judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of S. 537. (S. 366).

2. **Language and contents of judgment.**—(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the

presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English: and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it, and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative,

(3) When the conviction is under the Indian Penal Code, and it is doubtful under which of two Sections or under which of two parts of the same Section of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused it acquitted and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed: Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

(6) For the purposes of this section an order under S. 118 or 123, sub-sec. (3), shall be deemed to be a judgment. (S. 367).

3. (1) **Sentence of death.**—When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(2) **Sentence of transportation.**—No sentence of transportation shall specify the place to which the person sentenced is to be transported. (S. 368).

4. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force or in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error. (S. 369).

Can a Criminal Court alter or revise its own judgment after it is signed ? C. U. 1912 (b).

5. Presidency Magistrate's judgment.—Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars :—

(*a*) the serial number of the case ;

(*b*) the date of the commission of the offence ;

(*c*) the name of the complainant (if any) ;

(*d*) the name of the accused person, and (except in the case of an European British Suject) his parentage and residence ;

(*e*) the offence complained of or proved ;

(*f*) the plea of the accused and his examination (if any) ;

(*g*) the final order

(*h*) the date of such order : and ;

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction. (S. 370).

6. Copy of judgment, etc., to be given to accused on application.—(1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall on the application of the accused be given to him without delay and free of cost.

(3) **Case of person sentenced to death.**—When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred. (S. 371).

7. **Judgment when to be translated.**—The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record. (S. 372).

8. **Court of Session to send copy finding and sentence to District Magistrate.**—In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held. (S. 373).

CHAPTER XXVII.—SUBMISSION OF SENTENCES FOR CONFIRMATION. (Ss. 374-380).

1. **Sentence of death to be submitted by Court of Session.**—When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court. (S. 374).

7. **Power to direct further inquiry to be made or additional evidence to be taken.**—(1) If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such enquiry and the evidence shall be certified to such Court. (S. 375).

3. **Power of High Court to confirm sentence or annul conviction.**—In any case submitted under S 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

C. U. 1873.

(*d*) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. (S. 376)

4. **Confirmation or new sentence to be signed by two Judges.**—In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them. (S. 377).

5. **Procedure in case of difference of opinion**—When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion the case, with their opinions thereon shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion. (S. 378).

6. **Procedure in cases submitted to High Court for confirmation.**—In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of con-

firmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session. (S. 379).

7. **Procedure in cases submitted by Magistrate not empowered to act under S. 562.**—Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate as provided by S. 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such enquiry or evidence to be made or taken. (S. 380).

CHAPTER XXVII.—EXECUTION. (Ss. 381-400).

1. **Execution of order passed under S. 376.**—When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation such Court of Session shall on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary. (S. 381).

2. **Postponement of capital sentence on pregnant woman.**—If a woman sentenced to death is found to be pregnant the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to transportation for life. (S. 382).

3. **Execution of sentences of transportation or imprisonment in other cases.**—Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by S. 381 the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant. (S. 383).

4. **Direction of warrant for execution.**— Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail, or other place in which the prisoner is, or is to be, confined. (S. 384).

5. **Warrat with whom to be lodged.**— When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor. (S. 385).

6. **Warrant for levy of fine.**—(1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(*a*) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender :

(*b*) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The Local Government may make rules regarding the manner in which warrants under sub-sec. (1), clause (*a*), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-sec. (1) clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the

Court which passed the decree, and all the provisions of the Code as to execution of decrees shall apply accordingly: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender. (S. 386).

7. **Effect of such warrant.**—A warrant issued under S. 386, sub-sec (1) clause (*a*), by any Court may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the attachment and sale of any such property without such limits when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found. (S. 387).

8. **Suspension of execution of sentence of imprisonment.**—(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(*a*) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, coditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and, if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-sec. (1) shall be applicable also in any case in which an order for the payment of money has been made, on non-recovery of which

imprisonment may be awarded, and the money is not paid forthwith ; and if the person against whom the order has been made, on being required to enter into a bond such as is required to in that sub-section fails to do so, the Court may at once pass sentence of imprisonment. (S. 388).

9. **Who may issue warrant**.—Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

10. **Execution of sentence of whipping only.**—When the accused is sentenced to whipping only, the sentence shall subject to the provisions of S. 391 be executed at such place and time as the Court may direct. (S. 390).

11. **Execution of sentence of whipping in addition to imprisonment.**—(1) When the accused—

(*a*) is sentenced to whipping only, and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(*b*) is sentenced to whipping in addition to imprisoment,

the whipping shall not be inflicted until fifteen days from the date of the sentence, or if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months. (S. 391).

11. **Mode of inflicting punishment.**—(1) In case of a person of or over sixteen years of age whipping

shall be inflicted with a light rattan not less than half an inch in diameter in such mode, and on such part of the person, as the Local Govenment directs ; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the Local Government directs.

(2) **Limit of number of stripes.**—In no case shall such punishment exceed thirty stripes and, in the case of person under sixteen years of age it shall not exceed fifteen stripes. (S. 392).

13. **Sentence of whipping not to be executed by instalments.**—No sentence of whipping shall be executed by instalments : and none of the following persons shall be punishable with whipping, namely :—

(*c*) females;

(*b*) males sentenced to death or to transportation or to penal servitude, or to imprisonment for more than five years ;

(*a*) males whom the Court considers to be more than forty-five years of age. (S. 393).

14. **Whipping not to be inflicted if offender not in fit state of health.**—The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

(2) **Stay of execution.**—If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shll be finally stopped. (S. 394).

15. **Procedure if punishment cannot be inflicted under S.391.**—(1) In any case in which, under S. 394, a sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed

the sentence can revise it : and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not execeeding twelve months or to a fine not execeeding five hundred rupees which may be in addition to any other punishment to. which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term or a fine of an amount exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict. (S. 395).

16. **Execution of sentences on escaped convicts.**—(1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall. subject to the provisions herein-before contained, take effect immediately, and, if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say—

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this Section.—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment ;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement ; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment. (S. 396).

17. Sentence on offender already sentenced for another offence.—When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced of imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may in its discretion. direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Provided, further, that where a person who has been sentenced to imprisonment by an order under S. 123 in defult of furnishing security is whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order the latter sentence shall commence immediately. (S. 397).

18. Saving as to Ss. 396 and 397.—(1) Nothing in S. 396 or S. 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment,. and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences of imprisonment, transportation or penal servitude. effect shall not be given to the award of imprisonment in default

of payment of the fine until the person has undergone the further sentence or sentences. (S. 398).

19. Confinement of youthful offenders in reformatories.—(1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897, is for the time being in force. (S. 399).

20. Return of warrant on execution of sentence.—When sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed. (S. 400).

CHAPTER XXIX.—SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES. (Ss. 401-402),

1. Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion, and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of His Majesty or of the Governor-General when such right is delegated to him to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by His Majesty or, in virtue of any powers delegated to

him by the Governor-General, any condition thereby imposed, of whatever nature shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with. (S. 401).

2. Power to commute punishment—(1) The Governor-General in Council or the Local Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of S. 54 or S. 55 of the Indian Penal Code. (S. 402).

CHAPTER XXX—PREVIOUS ACQUITTALS OR CONVICTIONS. (S. 403.)

What is the rule contained in the Criminal Procedure Code with regard to previous acquittals and convictions? C. U. 1901. Discuss shortly the provisions relating to previous acquittal or convictions operating as

1. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under S. 236, or for which he might have been convicted under S. 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under S. 235, sub-sec. (1).

bar to a fresh trial. C. U. 1920 (a). How far is a previous conviction or acquittal a bar to a fresh trial? C. U. 1913 (a) State shortly the circumstances under which a previous acquittal or conviction operates as a bar to a subsequent trial. C. U. 1925 (b).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of S. 26 of the General Clauses Act, 1897 or S. 188 of this Code.

Write an explanatory note on the principle of autre fois-acquit C. U. 1921 (b).

Exaplanation.—The dismissal of a complaint, the stopping of proceedings under S. 249, the discharge of the accused, or any entry made upon a charge under S. 273, is not an acquittal for the purposes of this section. (S. 403).

C. U. 1913 (b)

C. U. 1913 (b), 1920 (b), 1924 (b).

Illustrations—(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or upon the same facts with theft simply, or with criminal breach of trust. (*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for robbery. (*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies, A may be tried again for culpable homicide. (*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B. (*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily

causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section. (*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts. (*g*) A, B and C. are charged by a Magistrate of first class with, and convicted by him of, robbing D. A, B and C. may afterwards be charged with, and tried for, decoity on the same facts.

C.U 1921 (b), 1913 (a).

Note—The principal on which the right to plead "*autre fois acquit*" or "*autre fois convict*" is founded is that a man. should not be put twice in jeopardy for the same matter '*Nemo debet bis verari*" At Common Law a man who has once been tried and acquitted of a crime may not be tried again for the same offence if he was in jeopardy on the first trial. He was so in jeopardy if (1) the Court was competent to try him for the offence ; (2) the trial was upon a good indictment on which a valid judgment of conviction could be entered , and (3) the acquittal was on the merits i. e. by verdict on the trial or in summary cases by the dismissal on the merits, followed by a judgment or order of acquittal. (Russel on Crimes, 1982)

"**A person who has once been tried etc.**"—This section refers only to a second trial and bars it. if it comes within its terms. It does not affect the powers of a Court of Appeal or Revision in the same proceeding. Thus, an appellate Court can, under S 423 convict on a charge on which the accused had been acquitted by the Court of first instance or order a new trial on the same charge. (23 Cal. 975 : 37 Mad. 199 ; 22 Cal. 377). An appeal or a revision is not a second trial but a continuation of the same trial.

Where a jury is discharged under S. 305, the accused may be retried under S. 308 ; such a trial is not barred by this section. In such a case the accused is being tried on the original indictment and not retried. Moreover in such a a case the accused is neither convicted nor acquitted and therefore his trial is not barred. (41 Cal. 1072).

The Government of India prosecutes certain persons ; it then decides to withdraw all the charges against them. Can the Govt. revive proceedings against those very persons on the self same charges ? C. U. 1921 (suppl).

A strikes B on the head with a *lathi* causing fracture of the skull. A is tried on a charge under S. 325 I. P.C. (Voluntarily causing grievous hurt) before a Magistrate of 1st class. The Court allows a composition of the offence by B, and A is accordingly acquitted under S. 345 of the Code of Criminal Procedure. B subsequently dies and A is placed on his trial before the Court of Sessions for an offence under S. 302 I. P. C. (culpable homicide not amounting to murder). A pleads that the trial cannot proceed in view of the previous acquittal. State briefly your views for and against the plea. C. U. 1929 (a) [See S. 403 (a) & ill (c)].

This section bars a subsequent trial of the same person who had once been placed on trial for the same offence. It does not, however, bar the trial of persons who had not been placed in the first trial but who were implicated in the offence committed by the accused who was placed on the first trial. (37 Cal. 680; 41 Cal. 754; 36 All. 168. *Contra*: 7 C. W. N. 493).

There must have been a previous trial of the accused to bar a subsequent trial under this section. Under the English Law, unless acquittal was on the merits *i.e.* by verdict on the trial or in summary cases by dismissal on the merits followed by a judgment of acquittal, it does not operate as a bar. But under the Code trial in the literal sense of the word is not necessary. The words "who has once been tried" mean against whom the Court has taken cognizance of the offence and issued process. Thus, it is not necessary that there should be a full trial and on acquittal or' conviction on the merits. In a summons case where the accused appears and answers to the charge he is said to be "tried" although the case is dismissed for non-appearance of the complainant. In such a case the accused cannot be tried again for the same offence. (2 Weir 457 : 34 Mad. 253). Similary where the police filed a charge sheet against a certain person before a Magistrate and a summons was issued, but before it was served the Public Prosecutor withdrew from the case with the consent of Court under S. 494 and the accused was acquitted, it was *held* that the accused must be said to have been "tried and acquitted" within the meaning of this section and the acquittal bars a further trial for the same offence. (40 Mad. 976. *Contra* : 40 Mad. 977, notes). So also, the withdrawal of remaining charges under S. 240, on conviction of one of several charges has the effect of an acquittal and bars a fresh trial on the same facts. (19 W. R. 55).

If there is a gross irregularity or illegality in a trial (*e.g.* trial of a warrant case as a summons case) such a trial will not operate as a bar to subsequent trial of the accused for the same offence. (13 W. R. 42; 6 A. W. N. 200; 6 W. R. 13). But if the trial had otherwise been regularly conducted,

it will bar a second trial even though no formal charge had been framed therein or even though the second court considers that the former conviction or acquittal was unwarranted by the evidence on the record in the first trial. (3 All. 129 ; 7 W. R. 15).

Proceedings in Court are preceded by proceedings by way of enquiry taken by the Court or investigation by the Police. A trial is distinguished from both. [See notes to S. 4 (k) at p. 4 *supra*].

In a summons-case an accused is said to be "tried" when he appears and answers to the intimation under S. 242, which takes the place of a formal charge. In a warrant-case the trial commences when a charge is framed under S. 254. In a case triable exclusively by a Court of Sessions, the trial commences after charge under S. 210. There is no trial before the charge is framed but an enquiry only. (Woodroffe, 442 citing 32 Mad. 220, 225 ; 15 Cal. 608, 620; 2 Weir 457 ; 34 Mad. 253 ; 32 Mad. 218).

"By a Court of competent jurisdiction".—The rule that no one ought to be twice tried on the same facts has application in two classes of cases:—(a) Where the offender has actually been tried for the same offence charged in the second trial (Cl. 1). Here, provided that the Court which tried the offence was of competent jurisdiction, a second trial is barred. (*b*) Where the offender has not been actually tried for the same offence charged in the second trial but he could have been charged with it under S. 236 or convicted of it under S. 237 (Cl. 2). In this case also a further trial is barred provided that the Court by which the offender was first tried was competent to try the offence with which he is subsequently charged. Cl. 4). if the Conrt was not competent, then there is no bar to a second trial (*libid*). (Woodroffe, 441). It is necessary to a plea of *autre fois acquit* that the first Court should have had competent jurisdiction to try the offence and therefore the conviction or acquittal of an accused by a Court not having jurisdiction is no bar to the institution of fresh proceeding against the accused on the same facts. (2 W. R. 9, 6 W. R. 13). The principle is that the accused

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must have been in jeopardy at the previous trial. Where, therefore, owing to the incompetency of the Court he was not lawfully liable to suffer judgment in the previous proceeding the section does not apply. (Russel on Crimes, 1983). A Magistrate cannot convict or acquit a prisoner whom he has no jurisdiction to try. Such an order is of no avail under this section (6 W R. 13). *See* Sub-sec. (4) and ills *(f)* and *(g)*. The words "not competent to try" in sub-sec. (4) mean" had no jurisdiction to try" (24 Mad. 641).

"While such conviction or acquittal remains in force."—This means " so long as the order of conviction or acquittal is not set aside by a court of appeal or revision." If the order of conviction or acquittal is set aside by a Court of appeal or revision the proceedings on the trial will be annulled and there is no prohibition against the prisoner being put on his trial. (7 W. R 2, 3). A judgment reversed by a Court of error is the same as no judgment, and in that case, therefore, the plea of autre fois acquit is not available. (3 C. & K. 193).

It is not necessary that the previous order should be in fact correct and proper, for while unreversed, it will support the plea in bar of a second trial. (Russel, 1983), If the offence is the same, the former conviction or acquittal is a bar to the second trial, even though the second Court considers that the former conviction or acquittal was not warranted by the evidence on the record in the first trial. (7 W. R. 15). Even if the judgment of acquittal was passed under a misapprehension of law, it would still operate as a bar. (4 S. L. R. 174 ; 11 Cr. L. J. 731). But where the first trial was conducted without any complaint at all, the trial is void *ab initio* and therefore a second trial is not barred (19 Cr. L. J. 796 ; 16 Cr. L. J. 65 ; 317 All. 317). A person once convicted of an offence cannot be again tried for the same offence and on the same facts, even though the complainant in the second case is not same person as the complainant in the first case. (18 A. L. J. 85).

"For the same offence."—The previous conviction or acquittal is a bar to a second trial, if the offence is the same.

If the offence is not the same, the former conviction or acquittal is no bar to the trial upon the second charge notwithstanding the evidence given in the two cases is the same. (7 W. R. 15).

"Nor on the same facts for any other offence etc."—A bar under this section operates not only where a person has been tried for an offence and convicted or acquitted of it and is sought to be tried again for the same offence but also when he is sought to be tried on the same facts for any other offence for which a different charge from the one made against him might have been made under S. 236 or for which he might have been convicted under S. 237. Where a person has been tried and convicted or acquitted of an offence, arising out of a particular set of facts, he cannot, while such conviction or acquittal remains in force, be again tried in respect of any offence based on the same facts, unless the case can be brought under one or other specific exceptions to the rule provided by the section. (14 Cr. L. J. 135)

The protection afforded by thi section extends tooffences only when they are based on the same facts and fall within the category of offences mentioned in S. 236 or 237. (1 Bom. L. R. 15). The true test is whether the evidence in the first case would have supported a conviction for the offence charged in the second case (2 Den. C. C. 94). Where an accused was tried under S. 408 I. P. C. for criminal breach of trust in respect of three sums of money alleged to have been dishonestly misappropriated and it was part of the prosecution-case at the trial that he had made three false entries to conceal the misappropriation and he was acquitted by the jury but was subsequently charged on the same facts under S. 477-A, I. P. C. (falsification of accounts) in respect of the said three entries, it was *held* that he could not on the same facts be tried again for what were virtually the same offence charged in a different farm. (49 Cal. 924)

C. U. 1926 (b)

The previous trial for an offence founded on particular facts does not bar a second trial for a different offence based on *different* facts. S. 236 contemplates a state of facts constituting a single offence; but where it is doubtful

whether the act or acts involved may amount to one or other of several cognate cases. When that is the case, the accused may be simultaneously charged with and tried for the commission of all or any of such offences, and after acquittal or conviction cannot again be tried on the same facts either for the specific offence or offences for which he had already been tried or for any other offence for which he might then have been tried under the provision of the section. S. 237 provides that in the case mentioned in S. 236 when a person is charged with one offence he can be convicted of another. (Woodroffe, 441 : 23 Cal. 174, 177).

"Distinct offences" (Sub-Sec. 2)—If the crimes are so distinct that the evidence necessary to prove one will not prove the other, it cannot properly be said that they are so far the same that the acquittal of one is a bar to a prosecution for the other. (Archbold, 177) A made a false report to X, a Tahasildar under the Court of Wards in which he made certain untrue allegations against M, a Sub Inspector of Police. A was prosecuted under S. 182 I. P. C. but acquitted on the ground that X was not a public servant. A was then prosecuted for defamation under S, 500 I. P. C. *Hele* that the previous trial was no bar. (37 Cal. 604)

C. U. 1911 (b)

The limitation of the exception to Sub-Sec. (1) of S. 235 necessarily involves the exclusion of cases falling under the other Sub-Secs. of S. 235 where the saveral offences are separable for the purposes of charging, but no distinct for the purposes of punishment. [Sub-Sec. (3) of S. 403, however, makes an exception in respect of a case which eventually falls under Sub-Sec. 3 of S. 235.] (14 Cr. L. J. 135, 10 C. W. N. 518).

Where the offender has not actually been tried for the same offence charged in the second trial, but he could have teen charged with it as a distinct offence under S. 235 (1) then the first proceedings are not bar to a second trial even if the Court was itself competent to try the second offence (Cl. 2). Under S. 235 (1) if in one series of acts so connected together as to form one and the same transaction, more offences than one, are committed by the same person, he

may be charged with, and tried at one trial for every such offence. Where it appears that the acts constituting one transaction disclose more offences than one which are *distinct* in their character, then although the accused might have been charged with, and tried at one and the same trial for, every such offence, still under cl. (2) the fact of his having been charged on the previous occasion with one offence only is no bar to the institution of a separate proceeding in respect of some other offence which was then disclosed. (23 Cal. 174, 178 ; Woodroffe 442).

Sub-Sec. (3)—*See* ills (c) and (d). To defeat the plea of "*autrefois acquit* or *convict*", the new facts or circumstances must have happened after or must have been unknown to the Court at the first trial. If the new facts or consequences were known to the Court at the time of the first trial, a second trial for an offence constituted by the new facts would be barred. The new facts or circumstances must be such as to indicate a different kind of offence of which there could be no conviction at the first trial. There is no authority for holding that when a man has been convicted of committing an act constituting an offence and further evidence subsequently comes to light which shows that his act constituted a graver offence than that of which he was convicted, he may, merely on that ground alone be put upon his trial for the graver offence. (8 Bur. L. T. 129 : 16 Cr. L. J. 267).

• **Acquittal**—This section applies only to cases of *acquittal* or conviction and has no application to a case in which an accused person is *discharged.* Thus it is competent for a Magistrate to rehear a complaint after the accused is discharged under S. 258 or S. 253. An order of *discharge* under S. 333 on a *nolle prosequi* or one under S. 119, 209, 213 or 484 has not the effect of an acquittal and is no bar to a fresh proceeding against the accused. The dismissal of a complaint under S. 203, an order under S. 249 stopping the proceedings of a trial and the discharge of the accused or any entry made upon a charge under S. 273 have not the effect of acquittal under this section. *See* Explanation.

Where a person who ought to have been *acquitted*, is erroneously ordered to be *discharged*, such order of discharge will be treated as one of acquittal and will bar a retrial. (12 Mad. 35 : 5 C. L. R. 259 : 1914 P. R. 29). On the other hand, a wrong order of acquittal instead of one of discharge will not bar a subsequent trial under this section (6 A. W. N. 260 : 8 A. W. N. 96 ; 6 W. R. 13). If in a warrant-case, the accused pleads guilty to a charge, the Magistrate can either convict or acquit him ; his order only dismissing the case amounts to one of acquittal and not of discharge of the accused and would bar a re-trial. (5 C. L. R. 259 : 1914 P. R. 29). On the contrary, if a Magistrate tries a warrant-case as a summons-case and acquits the accused without framing a charge, such an order of acquittal will be treated as one of *discharge* only and cannot operate as a bar. (6 A. W. N. 260)

The withdrawal of remaining charges under S. 240 on conviction of one of several charges, the non-appearance of the complainant in a summon case under S. 247, the withdrawal of a summons-case by the complainant under S. 248, a compromise under S. 345, the withdrawal of the public prosecutor from the case under S. 494 (b), the dismissal of a summons-case, and an order of acquittal under S. 258 have the effect of acquittal and will bar a fresh trial under this section. Under S. 333, the Judge of a High Court can enter a judgment of acquittal on a *nolle prosequi* by the Advocate-General.

Distinction between Acquittal and Discharge—An accused may be freed from the charge made against him both by a discharge and by an acquittal. But a discharge is both in its nature and effect very different from an acquittal. A discharge takes place where there is no *primafacie* case made out against the accused and he has not been put on his defence, nor any charge drawn up against him to which he could plead. But after the accused has been called upon to enter on his defence or a charge has been drawn up against him, on a *prima facie* case having been made out by

the prosecution, the accused can either be convicted or acquitted, but not discharged. A man who is discharged may again be charged with the same offence if other testimony should be discovered (S. 437) but a man who has been acquitted cannot be put on his trial again for the offence of which he has been acquitted (S. 403). As to discharge in summons-cases *See* S. 249, in warrant-cases, *see* S. 253 and in enquires into cases triable by the High Court and the Court of Session *see* S. 209, (See Woodroffi's Cr. P. C. 448).

PART VII—Appeal, Reference and Revision. (Ss. 404-442.)

CHAPTER XXXI.—Appeals. (Ss. 404-431).

1. Unless otherwise provided no appeal to lie—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force. (S. 404)

2. Appeal from order rejecting application of attached property.—Any person, whose application under S. 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court. (S. 405.)

3. Appeal from order requiring security for keeping the peace or for good behaviour.—Any person who has been ordered under S. 118 to give security for keeping the peace or for good behaviour may appeal against such order—

To which Court and under what circumstances, would an appeal, if any, lie in each of the following cases?—
(a) from a sentence of three years,

(a) if made by a Presidency Magistrate to the High Court ;

(b) if made by any other Magistrate, to the Court of Session ;

rigorous imprisonment passed by an Assistant Sessions Judge; (b) from a sentence of three months' rigorous imprisonment passed by a Presidency Magistrate; (c) from an order of acquittal passed by a Magistrate of the second class; (d) from a sentence of whipping passed by a District Magistrate; (e) from an order to give security for good behaviour passed by a Magistrate of the first class. C. U. 1918 (b) To what extent are proceedings by way of appeal allowed by the Cr. P. C? C. U. 1904.

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district sepcified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session;

Provided, further, that nothing in this section shall apply to persons the proceedings, against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of S. 123. (S. 406),

3. Appeal from order refusing to accept or rejecting a surety.—Any person aggrieved by an order refusing to accept or rejecting a surety under S. 122 may appeal against such order—

(*a*) if made by a Presidency Magistrate, to the High Court;

(*b*) if made by the District Magistrate, to the Court of Session; or

(*c*) if made by a Magistrate other than the District Magistrate, to the District Magistrate. (S. 406A).

4. Appeal from sentence of Magistrate of the second or third class.—(1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under S. 349 or in respect of whom an order has been made or a sentence has been passed under S. 380 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

To which Cour will an appeal, if any, lie in the foll. case:—By a person sentenced by a first

(2) Transfer of appeals to first class Magistrate.—The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such

appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred. (S. 407).

class Magistrate to undergo rigorous imprisonment for 6 months. C. U. 1925 (a) [See S. 408] In what way and by what Court can the following order be set aside :— (a) A conviction by a 1st class Magistrate where the sentence is one of rigorous imprisonment for 1 year (see S 408). (b) A conviction by a Presidency Magistrate where the sentence is one of rigorous imprisonment for 9 months (See S. 411). (c) An order by a Sub-divisional Magistrate with 1st class powers, to give security for good behaviour uder S. 118 Cr P.C. (See S. 406). (d) A conviction by a first class Magistrate where the sentence is one of rigorous imprisonment for one month. (See S. 418). C.U. 1923 (a

5. Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.—Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any persen sentenced under S. 349 or in respect of whom an order has been made or a sentence has been passed under S. 380 by a Magistrate of the first class, may appeal to the Court of session :

Provided as follows :—

(*a*) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under S. 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal of all or any of the accused convicted at such trial shall lie to the High Court ;

(*b*) when any person is convicted by a Magistrate of an offence under S. 124A of the Indian Penal Code, the appeal shall lie to the High Court. (S. 408).

6. Appeals to Court of Session how heard. —An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge. Provided that an Additional Sessions Judge shall hear only such appeals as the Local Government may by general or special order, direct or as the Sessions Judge of the division may make over to him (S. 409).

7. Appeal from sentence of Court of Sessions —Any person convicted on a trial held by a Sessions

To which Court will an appeal if any lie in the foll. case :— (a) By a person sentenced by a Presidency Magistrate to undergo rigorous imprisonment for 6 months. (See S. 411). (b) By a person sentenced by an Addl. Sessions Judge to undergo rigorous imprisonment for 6 months. (See S. 410). (c) By a person ordered by a District Magistrate to give security for good behaviour. (See S. 406). C.U. 1925 (a) How does an appeal lie on behalf of an accused who pleads guilty and is convicted on such plea ? C. U. 1925 (a). [See S. 412].

Judge, or an Additional Sessions Judge, may appeal to the High Court. (S. 410).

8. Appeal from sentence of Presidency Magistrate.—Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees. (S. 411).

Note.—A combination of punishment does not give a right of appeal under this section though it does so under Ss. 413 and 414 ; thus no appeal lies from a sentence of six months' rigorous imprisonment and a fine of Rs. 200 or a further period of three months' simple imprisonment passed by a Presidency Magistrate. *See* S. 415.

There is no appeal against an order of discharge made by a Presidency Magistrate but the High Court has power to set aside the order of discharge passed by a Presidency Magistrate. (36 Cal. 994). Where a person has been convicted on his own plea by a Presidency Magistrate, no appeal lies to the High Court on the ground that the conviction was illegal, and therefore the sentence also, though the Magistrate has sentenced him to imprisonment for a term exceeding six months or to a fine exceeding Rs. 200 (5 Bom. 85.) *See* S. 412.

9. No appeal in certain cases when accused pleads guilty.—Nothithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence. (S. 412).

10. No appeal in petty cases.—Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding one month only or in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed. (S. 413).

Note.—Under the new amendment right of appeal is given in all cases of sentences of whipping or of imprisonment passed by a District Magistrate or Magistrate of the first class even though the period of imprisonment be one month or less. Under the old law in such cases no appeal lay except when the sentence of imprisonment exceeded one month.

10. No appeal from certain summary convictions.—Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under S. 260 passes a sentence of fine not exceeding two hundred rupees only. (S. 414).

Under what circumstances would an appeal lie from a sentence passed in a summary trial? C. U. 1924 (a) What is the provision of law regarding appeal from summary convictions? C. U. 1928 (b).

Note.—Under the new amendment even in the case of summary convictions all sentence of imprisonment or of whipping are now made appealable. Under the old law only European British subjects enjoyed the privilege of appeal in such cases.

11. Proviso to Ss. 413 and 414.—An appeal may be brought against any sentence referred to in S. 413 or S. 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section (S. 415).

11A. Special right of appeal in certain cases.—Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been

passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal. (S. 415-A).

On what matters is an appeal admissible on behalf of a person who is convicted in a trial held with the aid of a jury? C.U. 1925 (a)

12. Appeal on behalf of Government in case of acquittal.—The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. (S. 417).

13. Appeal on what matters admissible.—(1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury in which case the appeal shall lie on a matter of law only.

On what grounds would an appeal lie from a conviction in a trial held with the assistance of a jury? C. U. 1915 (a)

(2) Notwithstanding anything contained in sub-section (1) or in S. 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.

Explanation.—The alleged severity of a sentence shall, for the purposes of this section be deemed to be a matter of law. (S. 418).

Is an appeal allowed by law in any of the following cases:—(a) a sentence of a fine of Rs. 200 and rigorous imprisonment for six months passed by a Presidency Magistrate; (b) a sentence of a fine of Rs. 200 passed by a Presidency Magistrate; (c) a sentence of rigorous imprisonment for six months

14. Petition of appeal.—Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by jury, a copy of the heads of the charge recorded under S. 367. (S. 419).

15. Procedure when appellant in jail.—If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court. (S. 420).

16. Summary dismissal of appeal.—(1) On receiving the petition and copy under S. 419 or S. 420 the Appellate Court shall peruse the same and, if it considers that there is no sufficient ground for interfering,

it may dismiss the appeal summarily; Provided that no appeal presented under S. 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

passed by a Presidency Magistrate? C. U 1920 (b). [See S. 411].

(2) Before dismissing an appeal under this section the Court may call for the record of the case but shall not be bound to do so. (S. 421).

17. Notice of appeal.—If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal; and, in cases of appeals under S. 417, the Appellate Court shall cause a like notice to be given to the accused. (S. 422).

What are the powers of an appellate Court? A is tried by a first class Magistrate for theft and assault and sentenced to 1 month's imprisonment for each offence. Can A prefer an appeal? C. U. 1913 (a). What are the powers of an appellate Court in disposing of an appeal? C. U 1925 (b). Does an appeal lie from a conviction under the summary procedure in any case? C. U. 1917 (a). What are the powers of an appellate Court? Does an appeal lie against an order of acquittal? C.U. 1916 (b). What are the powers of an Appellate Court in trying

18. Powers of Appellate Court in disposing of appeal.—(1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under S. 417. the accused if he appears, the Court may, if it considers that is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) *in an appeal from an order of acquittal*, reverse such order and direct that further inquiry be made or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) *in an appeal from a conviction*, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence or (3), with or without

an appeal from conviction and from acquittal respectively? Are the powers of a Court of Revision more restricted? If so, in what way? C. U. 1921 (a)

such reduction and with or without altering the finding alter the nature of the sentence, but, subject to the provisions of S. 106, sub-section (3), not so as to enhance the same;

(c) in an appeal from any other order, alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper.

Enumerate the powers of an Appellate Court? Does an appeal lie against an order of acquittal? C. U. 1921 (suppl).

(2) Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him, (S. 423).

What are the powers of an appellate court in an appeal from a conviction? C. U. 1910 (b), 1918 (b).

Can it reverse the unanimous verdict of a jury? C. U. 1910 (b).

Appeal from conviction and appeal from acquittal.—Difference.—The indications of error in a judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a judgment of conviction (7 P. R. 1914). The High Court will not interfere in appeal from an acquittal unless the judgment of the court was clearly wrong and the judgment either perverse or based on obvious error of procedure (30 Mad. 44: 18 C. W. N. 666). The contrary view has been taken in 17 Cal. 485, 20 C. W. N. 128, 38 Mad. 1028, 7 P. R. 1904, 19 Bom. 51 and some other case where it has been *held* that there is no distinction in the Code between the right of appeal in an acquittal and the right of appeal against a conviction both being governed by the same rules and being subject to the same limitations.

Powers of an appellate Court in disposing of appeals—The Appellate Court—

(1) may dismiss an appeal summarily, if it finds no sufficient ground for interfering, provided the appellant or his pleader has been heard in support of the same (S. 421);

State what are the powers of an

(2) admit an appeal, and after perusing the record of the case and hearing the appellant or his pleader and the public prosecutor and the accused, in case of an appeal

under S.417, dismiss the same if it find no sufficient ground for interfering;

(3) in an appeal from an order of acquittal, (*a*) reverse such order and direct further enquiry to be made or the accused to be retried or committed for trial as the case may be, or (*b*) find him guilty and pass sentence according to law;

(4) in an appeal from a conviction, (*i*) reverse the finding and sentence and acquit or discharge the accused, or (*ii*) order him to be retried or committed for trial, or (*iii*) alter the finding, maintaining the sentence, or (*iv*) with or without altering the finding, reduce the sentence or alter the nature of the sentence (but no so as to enhance the same) with or without reducing it and with or without altering the finding;

(5) in an appeal from any other order, alter or reverse such order;

(6) make any amendment or any consequential or incidental order that may be just or proper;

(7) reverse or alter the verdict of a Jury on the ground of misdirection by the Judge or of the Jury misunderstanding the law laid down by him (S. 423);

(8) suspend the execution of the sentence or order appealed against and release the appellant (if in confinement) on bail or on his own bond, during the pendency of the appeal (S. 426).

(9) take additional evidence or direct it to be taken by a Magistrate or by a Court of Session (S. 428).

appellate court in disposing of an appeal (a) in case of acquittal and (b) in case of conviction. On what grounds can an appellate court set aside the verdict of a jury? C. U. 1912 (a).

When is a court of appeal authorised to alter or reverse the verdict of the jury? C. U 1914 (a).

What are the powers of an appellate Court? Does an appeal lie agst an. order of acquittal? C. U. 1916 (b).

Where would an appeal lie (a) from an order of acquittal,

19. Judgments of subordinate Appellate Courts.—The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court: Provided that unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered. (S. 424).

20. Order by High Court on appeal to be certified to lower Court.—(1) Whenever a case is

(b) from a conviction by a third class Magistrate, (c) by a District Magistrate, (d) by a Presidency Magistrate, (e) from a conviction in a summary trial? Is there any restriction or limitation as regards appeal in the last two cases? C. U. 1912 (b).

decided on appeal by the High Court under this Chapter it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate, other than the District Magistrate the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its Judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith. (S. 425).

21. Suspension of sentence pending appeal. Release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

What are the rules of law as regards appeals from the decisions of an Assistant Sessions Judge? C. U. 1917 (b).

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced. (S. 426).

22. Arrest of accused in appeal from acquittal.—When an appeal is presented under S. 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail. (S. 427).

State the procedure to be adopted by

23. Appellate Court may take further evidence or direct it to be taken.—(1) In dealing with any appeal under this Chapter, the Appellate Court, if

it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

an appellate Court if it is of opinion that it is necessary to take additional evidence in the case. C. U. 1917 (b).

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken: but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry. (S. 428)

24. **Procedure where Judges of Court of Appeal are equally divided.**—When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion and the judgment or order shall follow such opinion. (S. 429).

What are the powers of the High Court as a court of Revision? What other courts are empowered to reverse the proceedings of subordinate courts and to what extent? C. U. 1916 (b)

25. **Finality of orders on appeal.**—Judgment and orders passed by an Appellate Court under appeal shall be final, except in the cases provided for in S. 471 and Chapter XXXII. (S.430).

26. **Abatement of appeals.**—Every appeal under S. 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. (S. 431).

What are the powers of a Sessions court as a court of Revision? Is an order passed by a District Magistrate liable to be revised by a Sessions Judge? C. U. 1916 (b).

Cases in which no appeal lies.—No appeal lies—

(1) from the sentence of a Presidency Magistrate of imprisonment not exceeding 6 months or of fine not exceeding Rs. 200 (S. 411);

(2) from the sentence of a court of session or any Presidency Magistrate or a first class Magistrate passed on an

What happens to an appeal on the death of the appellant? C. U. 1925(a). [See S. 431].

accused person pleading guilty. (The accused may, however, appeal against the extent or legality of the sentence). (S. 412.);

(3) from a sentence of a Court of Session of imprisonment not exceeding 1 month.* (S. 413).;

(4) from a sentence of a Court of Session or a District Magistrate or other first class Magistrate of fine not exceeding Rs. 50. (*Ibid*);

What powers of control have Sessions Judges and District Magistrates over Subordinate Courts? What procedure should they follow when they wish to alter or reverse a sentence passed by an inferior Court? C.U. 1912(b).

(5) from a sentence of imprisonment by a Court of Session or District Magistrate or a first class Magistrate in default of payment of fine where no substantive sentence of imprisonment has *also* been passed. (S. 413, Expl):

(6) from a sentence of fine not exceeding Rs. 200 passed by a Magistrate empowered under S. 260 of the Code in a case tried summarily* (S. 414.)

Appeal to District Magistrate.†—An appeal lies to District Magistrate—

(1) from an order under S. 118 requiring security for keeping the peace or for good behaviour passed by a Magistrate other than a District Magistrate in certain special cases. (*See* first proviso to S. 406):

Discuss if A has a right of appeal in the following cases and if so to which court would his appeal lie:— (a) A is convicted by a Sessions Judge & sentenced to 15 months' rigorous imprisonment. Would it make any difference if the sentence is one of 15 days' rigorous imprisonment? (b) A is convicted by

(2) from an order refusing to accept or rejecting a security under S. 122 made by a Magistrate other than a District Magistrate (S. 406-A);

(3) from sentences of Magistrates and Benches of Magistrates of 2nd and 3rd class;

(4) from any sentence under S. 340 passed by a subdivisional Magistrate of 2nd class;

(5) from any order or sentence under S. 380 passed by a Subdivisional Magistrate of the 2nd Class. (S. 467).

*But if there is a combination of two or more of these sentences (except a sentence of imprisonment in default of payment of fine) an appeal lies (S. 415). Similarly, when more persons than one are convicted in one trial and an appeallable judgment or order is passed in respect of any such persons, all or any of these persons convicted at such trial, have a right of appeal. (S. 415-A).

†Subordinate first class Magistrates can hear appeals if specially empowered on this behalf by the Local Government. (S. 407, Cl. 2).

Appeal to Court of Session.—An appeal lies to the Court of Session.—

(1) from the sentence of an Asst. Sessions Judge, a District Magistrate or first class Magistrate. (S. 408);

(2) from any sentence under S. 349 passed by a Magistrate of the first class. (*Ibid*);

(3) from an order or sentence under S. 380 passed by a Magistrate of the first class. (*Ibid*);

(4) from a sentence of imprisonment for a term not exceeding 4 years passed by an Asst. Sessions Judge or a Magistrate specially empowered under S. 30 (*Ibid*).

Appeal to High Court.—An appeal lies to the High Court—

(1) from an order under S. 118 for keeping the peace or for good behaviour passed by a Presidency Magistrate (S. 406);

(2) from an order refusing to accept or rejecting a surety under S 122 made by a Presidency Magistrate. (S. 406-A);

(3) from any sentence of imprisonment for a term exceeding 4 years or of transportation for any period passed by an Asst. Sessions Judge or a Magistrate specially empowered under Sec. 30 (S. 408);

(4) from the sentence of a Magistrate convicting a person for sedition under sec. 124-A I. P. C. (S. 408);

(5) from the sentence of a Sessions Judge or an additional Sessions Judge. (S. 410);

(6) from any sentence of imprisonment for more than 6 months or of fine exceeding Rs. 200 passed by a Presidency Magistrate;

(7) from an original or appellate order of acquittal passed by any Court other than a High Court. (S. 417). [Appeal in this case can only be made at the instance of the Local Government and only to the High Court. Private persons have no right of appeal in such a case].

an Asst. Sessions Judge & sentenced to undergo 3 years' rigorous imprisonment. What difference would it make if he is sentenced to undergo 5 years' rigorous impisonment? (c) A is convicted of Sedition under S. 124-A I. P. C. by a Magistrate of 1st class & sentenced to undergo 3 months' rigorous imprisonment. (d) A along with others is convictted by a Presidency Magistrate & all are sentenced to pay a fine of Rs 200. Would it make any difference if one of them is sentenced to pay a fine of Rs. 500? C. U. 1929 (a). What are the powers of an appellate Court? A is tried by a first class Magistrate for theft and assault and sentenced to a month's imprisonment for each offence. Can

A prefer an appeal? C. U. 1913 (a).

Does an appeal lie from a conviction under the summany procedure in any case? C. U. 1917 (a).

When does an appeal lie to the High Court from a sentence passed by a Magistrate of the 1st class? C. U. 1925 (a)

Appeal to Privy Council—As a matter of policy, the Privy Council seldom interferes in criminal cases. (*See* Cl. 41 of the Letters Patent. The Latters Patent specifically excludes criminal cases from the cognizance of the Privy Council, except where the High Court, in any judgment, order or sentence made in the exercise of its original jurisdiction or in any criminal case, has reserved any point or points of law for the opinion of the High Court and the High Court has declared it to be a fit case for appeal to the Privy Council on the application of the aggrieved person). But it will do so where a grave miscarriage of justice has taken place. "Her Majesty will not review criminal proceedings unless it be shewn that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done (*In re* A. M. Dillet, 1887, 12 App. Cas. 459). In *Vaithinath Pillai* v. *King Emperror* (40 I. A. 193) it has been *held* that the Privy Council will not allow a criminal conviction to stand where on a charge of murder, a vast body of wholly inadmissible, hearsay and other evidence, had been admitted at the trial and used to the grave prejudice of the accused.

CHAPTER XXXII.—REFERENCE AND REVISION. (Ss. 432-442).

What are the remedies an accused has when he has been awarded a non-appealable sentence? C.U. 1919 (a)

1. Reference by Presidency Magistrate to High Court.—A Presidency Magistrate may, if he thinks fit, refer to the opinion of the High Court any question of *law* which arises in the hearing of any case pending before him or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision, either commit the accused to jail, or release him on bail to appear for judgment when called upon. (S. 432).

Give an account of the appellate and the revisional powers of the High Court in

2. Disposal of case according to decision of High Court.—(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was

made who shall dispose of the case conformably to the said order. (S: 433).

(2) **Direction as to costs.**—The High Court may direct by whom the costs of such reference shall be paid. (S. 433).

3. **Power to reserve questions arising in original jurisdiction of High Court.**—(1) When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

(2) **Procedure when question reserved.**—If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail; and the High Court shall have power to review the case, or such part of it as may be necessary and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit. (S. 434).

4. **Power to call for records of inferior Courts.**—(1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding, before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that

a criminal case. C. U. 1922 (a).

What is meant by the High Court's power of revision? Can the High Court enhance a sentence? C.U. 1910 (a)

State the manner in which a case is to be disposed of when the Judges composing a court of Revision are equally divided in opinion? C.U. 1914 (a).

A is convicted of an offence by a Presidency Magistrate and is sentenced to 9 months' imprisonment. No appeal is preferred against the conviction but an application is made by way of revision to the High Court. Is such an application entertainable? State reasons. C. U. 1902. Discuss the difference in the High

Court's appellate and revisional powers with reference to a leading case. C.U. 1921 (a), 1912 (b).

he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of S. 437.

(2) if any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them. (S. 435).

5. Power to order inquiry.—On examining any record under S. 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrate subordinate to him to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under S. 203 or sub-section (3) S. 204, or into the case of any person accused of an offence who has been discharged.

Provided that no Court shall make any direction under the this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made. (S. 436).

What is meant by further enquiry ? How can it be obtained ? C. U. 1910 (b).

Further enquiry.—The term "further enquiry" means an enquiry which has not already taken place *i. e.* an additional enquiry. The term as used in this section is synonymous with the term fresh enquiry as used in S. 437 *infra.*

6. Power to order commitment.—When, on examining the record of any case under S. 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of

Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been in the opinion of the Sessions Judge or District Magistrate, improperly discharged.

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;

(*b*) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may, direct the inferior Court to inquire into such offence. (S. 437).

7. **Report to High Court**—(1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under S. 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. (S. 438).

8. **High Court's powers of revision.**—(1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Ss.

423, 426, 427 and 428 or on a Court by S. 338, and may enhance the sentence ; and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by S. 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under S. 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in the section applies to an entry made under S. 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction. (S. 439).

High Court's powers of revision.—The High Court may,—

(*a*) exercise all the powers of an appellate Court except that of converting an acquittal into conviction ;

(*b*) tender pardon to an accomplice or direct tender of pardon ;

(*c*) enhance the sentence ;*

*The High Court *as a Court of appeal*, cannot enhance a sentence. *Vide* supra.

(*d*) direct the District Magistrate by himself or by any of his subordinate Magistrates, to make further inquiry into any complaint dismissed under S. 203 or sub-sec. (3) of S. 204 or into the case of any person accused of an offence who has been discharged. (S. 436).

The High Court, as a Court of Revision, can interfere with a judgment of acquittal or conviction and can also enhance punishment. It can act as a Court of Revision after it has acted as a Court of appeal in a particular case. (*Queen* v. *Gora Chand*, 5 W. R. Cr. 45 F. B.)

Revisional powers of Sessions Judge.—The Sessions Judge may—

(*a*) cause a person to be arrested and order him to be committed for trial, when such person being charged with an offence triable exclusively by the Court of Session, has been improperly discharged by any inferior Court (S. 437);

(*b*) direct the inferior Court to inquire into some other offence which seems to him to have been committed by the accused (S. 437) ;

(*c*) direct the District Magistrate by himsel for by any Magistrate subordinate to him to make further enquiry into any complaint dismissed under S. 203 (for want of sufficient ground) or clause (3) of S. 204 (for non-payment of fees for issue of summons on the accused) or into the case of any accused person who was been discharged, (S. 406) :

(*d*) report for the orders of the High Court, the result of his examination of the record of the proceedings of any inferior Court and recommend the reversal or alteration of a sentence (S. 438).

District Magistrate's power of revision.—The District Magistrate—(*a*) may exercise the powers of a Sessions Judge as conferred by Ss. 437 and 438 of the Code ;

(*b*) may make or direct any subordinate Magistrate to make further inqury into any complaint which has been dismissed under S. 203 or sub-sec (3) of S. 204 or into the case of any person accused of an offence who has been dicharged (S. 436).

9. Optional with Court to hear parties.—No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision. Provided that the Court may, if he thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect S. 439, sub-section (2). (S. 440).

10. Statements by Presidency Magistrate of grounds of his decision to be considered by High Court.—When the record of any proceeding of any Presidency Magistrate is called for by the High Court under S. 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order. (S. 441).

11. High Court's order to be certified to lower Court or Magistrate.—When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by S. 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall by amended in accordance therewith. (S. 442).

PART VIII.—Special Proceedings: (Ss. 443—491-A)

CHAPTER XXXIII.—SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED. (Ss. 443—491)

[**Note.**—This Chapter has been thoroughly recast by the Criminal Law Amendment Act XII of 1923, better known as the Racial Distinctions Act, with a view to minimise the differences existing between the procedure in criminal trials

applicable to European British subjects and Indian British subjects under the Code. Prior to the amendment there were the following important distinctions between the provisions relating to Indians and those relating to European British subjects :—

State briefly some of the principal changes which have been recently made with regard to the special provisions in the Cr. P. C. relating to cases in which European and British Indian subjects are concerned. C.U. 1924 (b).

(1) By virtue of the provisions of S. 443 of the Code, European British subjects were not formerly triable by a 2nd or 3rd Class Magistrate and were only triable by a Magistrate of the first class if he was a Justice of the Peace and was also himself a European British subject unless he was a District or a Presidency Magistrate. The amending Act has done away with all provisions under which a person who might try a European British subject must be a Justice of the Peace and a European British subject. But except in cases punishable with sentences of fine only not exceeding Rs. 50, European British subjects are not still triable by a second or third class Magistrate, though all first class Magistrates have been given power to try European British subjects, irrespective of their nationality.

(2) The jurisdiction of Additional and Assistant Sessions Judges over European British subjects were formerly restricted by S. 444 of the Code to cases where they were themselves European British subjects and in the case of Asst. Sessions Judges to those who had been Asst. Sessions Judge for at least 3 years and who had been specially empowered in this behalf by the Local Govt. The amending Act has abolished all these restrictions.

(3) Formerly the sentences that might be awarded by Magistrates of the first class, District Magistrates and Courts of Sessions in the case of European British subjects were limited to 3 months' imprisonment and a fine of Rs. 1000, 6 months' imprisonment and a fine of Rs. 2000 and 1 year's imprisonment and unlimited fine respectively. (Ss. 446 and 449) and the High Court had exclusive jurisdiction when the offence was punishable with death or transportation. [S. 447 (2)]. Now under the amending Act, a Court of Session can pass any sentence authorised by S. 31 on an European British subject except a sentence of whipping and a District Magistrate or first class Magistrate can pass on an European British subject a sentence of imprisonment for 2 years or fine up to Rs. 1000 or both but not whipping. (Ss. 32, 34-A.) Inequalities, however, still exist, for (i) a Sessions Court and a District or a first class Magistrate cannot even now pass a sentence of whipping on European British subjects ; (ii) a specially empowered Magistrate can pass on European British subjects those sentences only which can be passed by an ordinary first class Magiserate, namely a sentence of imprisonment for 2 years or fine up to Rs. 1000 or both, and (iii) a second or third class Magistrate have only the very limited jurisdiction to punish with fine not exceeding Rs. 50.

(4) Formerly in trials before a High Court, a Court of Sessions or a District Magistrate, European British subjects could claim that they should be tried by jurors of which not less than half the number should be Europeans or Americans. (Ss. 450, 451). In the Sessions Court, in cases ordinarily triable with the aid of assessors they could either claim to be tried by such a mixed jury of alternatively claim that not less than half the number of assessors should be Europeans or Americans. But in the case of Indian British subjects, the corresponding privilege to claim trial by jury of which the majority should consist of persons who were neither Europeans nor Americans was limited only to trials by jury before the Sessions Court. Under the amending Act, trials by jury before a District Magistrate and the right to claim mixed jury in cases triable before Sessions Court with the aid of assessors have been abolished. In lieu of the former a new procedure for trial by a mixed bench in summons cases and commitment to Sessions in warrant cases has been laid down both for European British subjects and Indian British snbjects. (Ss. 445, 446). The former right to claim mixed jury in trials before the High Court and the court of Sessions in cases triable by jury has been retained for Europeans British subjects and a corresponding right has been extended to Indian British subjects also. (S. 275). In cases triable with the aid of assessors before the Sessions Court, European British subjects can now claim under the amending Act that *all* the assessors (and not the half number only) shall be Europeans or Americans. A corresponding right has been given to Indian British subjects also. (S. 284-A.)

(5) Formerly, under S. 408 (a) European British subjects on conviction by an Asst. Sessions Judge, a District Magistrate or a First Class Magistrate had the option of appealing in the alternative to the High Court or to the Court of Sessions. The amending Act has taken away this optional right of appeal to the High Court by repealing S. 408 (a).

(6) Formerly, European British subjects had more extensive rights of appeal in criminal cases than Indians, in that the former were exempted by S. 416 from the operations of Ss.413 and 414 which barred an appeal in certain petty cases and cases tried summarily. So far as appeals from sentences of imprisonment are concerned, the old rights of European British subjects have been retained but they have also been extended to *all* convicted persons; the remaining more extensive rights of appeal hitherto enjoyed by European British subjects have, however, been withdrawn by the repeal of S. 416. Now, an appeal lies to the Court of Sessions on conviction by an Asst. Sssions Judge or a District Magistrate or a First Class Magistrate (Ss. 408, 409) or by a mixed bench of Magistrates under S. 445 (2). An appeal on

conviction by a Sessions Judge or Addl. Sessions Judge including a conviction by a Sessions Judge under S. 445 (2) lies to the High Court [Ss. 410, 445 (3)] An appeal on conviction by a second or third class Magistrate lies to a District Magistrate. (S. 407). An appeal is allowed on conviction in a High Court to a special Bench of that Court and an appeal is allowed to Govt. in case of an acquittal, in cases involving racial questions. (S. 449).

(7) By virtue of S. 456 of the Code, European British subjects were formerly able to obtain remedies in the nature of *Habeas Corpus* which were more extensive than those provided for Indians So far as British India is concerned, the amending Act has equalised the privileges by repealing S. 456 of the Code and extending the right to Indians under the amended S. 491. The only difference now is in the power given to the Governor-General in Council to empower High Courts of Judicature established by Letters Patent to exercise the same powers in the case of European British subjects who are outside the limits of their appellate criminal jurisdiction. See S. 491-A. This provision is a re-enactment in a modified form of the provisions of the former section 458 and is only effectual *outside* British India.

(8) Formerly, under S. 111, the provisions of the Code regarding the taking of security for good behaviour in Ss. 109 and 110 did not apply to European British subjects in cases where they might be dealt with under the European Vagrancy Act, 1874. The amending Act has repealed S. 111 with the result that Ss. 109 and 110 now apply equally to Europeans and Indians.

(8) Formerly, the definition of "High Court" was not so wide in the case of European British subjects as it was in the case of Indians, for certain Courts (e.g. Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sindh) which were High Courts for Indians under the Code were not High Courts for European British subjects. The definition of the expression "High Court" has been so amended by Act XII of 1923 as to include the courts of the Judicial commissioner of the Central Provinces, Oudh and Sindh, in the case of Europeans as in the case of Indians.

It cannot be said even now that as a result of the amendments, Indians and Europeans have been placed on the same footing as regards the criminal procedure applicable to them. European British subjects still, though to a lesser extent, occupy in certain matters a privileged position as compared with Indian British subjects. The principal distinctions still existing between the provisions relating to Indians and those relating to European British subjects are as follows:— (1) European British subjects cannot be tried by a second or third class Magistrate except for offences punishable with fine only not exceeding Rs. 50. (S. 29 A). (2) European

British subjects cannot be given a sentence of whipping but it is still retained for Indians. (3) The sentences which a specially empowered Magistrate may pass an European British subjects are light when compared with what he can impose on Indian British subjects. Such Magistates can only pass on European British subjects a sentence of imprisonment for two years or fine up to Rs. 1000 or both. (4) When an European British subject can claim a trial before a Sessions Judge and a jury in cases of gravity the retention of Ss. 30 and 34 of the Code deprives an Indian under the same circumstances of the privilege of a jury trial by allowing the case to be tried by a specially empowered Magistrate. (5) European British subjects can obtain writs in the nature of *Habeas Corpus* from High Courts of Judicature established by Letters Patent even *outside* the limits of British India. Each of these few privileges has been retained for one reason or another. Incidentally owing to the amendment in the definition of "European British Subject" the number of persons who are entitled to the privileges has been reduced by reason of the fact that they are now claimable only by persons of European descent in the male line.

The only distinction between the provisions relating to Indian British Subjects and those relating to Europeans (not being European British Subjects) and American formerly was that under S. 460 of the Code in every case triable by jury or with the aid of assessors in which a European (not being a European British subject) or an American was an accused, not less than half the number of jurors or assessors must, if practicable and if claimed, be European Americans. But in the case of Indian British subjects, the corresponding privilege to claim trial by jury of which the majority should consist of persons who were neither Europeans or Americans was limited only to trials by jury before the Sessions Court. Under the amending Act, Europeans (not being European British subjects) and Americans may now claim that a majority of the jurors or *all* the assessors (and not the half number only) as the case may be shall be Europeans or Americans. A similar privilege has been extended to British Indian subjects also in trials either by jury or with the aid of assessors before the High Courts as well as the Sessions Courts.*]

Determination regarding applicability of this Chapter.

1. (1) Where, in the course of the trial *outside a Presidency town*† of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under S.213 or is asked to show cause under S.242 or enters on his defence under S. 256 as the case may be,

* Curious students are referred to Mr. Monnier's learned articles on the subject published in 27 C. W. N.

† This Chapter does not, therefore, apply to cases arising *within* the Presidency towns.

claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case, after making such inquiry as he thinks necessary, and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall if he is satisfied—

(*a*) that the complainant and the accused persons or any of them are respectively European and Indian British subjects, or Indian and European British subjects or

(*b*) that in view of the connection with the case of both an European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter,

record a finding that the case is a case which ought to be tried under the provisions of this Chapter, or, if he is not so satisfied, record a finding that it is not such a case.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sessions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

(3) Where the Magistrate rejects the claim, he shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented until it has been decided. (S,443).

Definition of complainant.

2. For the purposes of S. 443, "complainant" means any person making a complaint or in relation to any case of which cognizance is taken under clause (*b*) of S. 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of S. 154 :

Provided that a Public Prosecutor, a public servant, a member, officer or servant of any local authority, a railway servant as defined in S. 3 of the Indian Railways Act, 1890, or an officer or servant of any company, association or other body to which the Local Government may, by general or special order published in the local official Gazette, declare the provisions of this section to apply, shall not by reason only of the fact that he has made a complaint of, or given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be a complainant within meaning of this section nor shall a police-officer be so deemed by reason only of the fact that a report under S. 173 relating to a case has been made by or through him. (S. 444).

Procedure in summons-cases.

3. (1) Where a Magistrate, or a Sessions Judge decides under S. 443 that a case ought to be tried under the provisions of this Chapter and the case is a summons-case,

the Magistrate trying the same shall direct that the case be referred to a Bench of two Magistrates and shall send a copy of such order to the District Magistrate who shall forthwith provide for the constitution of a Bench of two Magistrates of the first class, of whom one shall be a European and the other an Indian, for the trial of the case.

(2) Where the Magistrates constituting the Bench by which a case is tried under this Section differ in opinion, the case, together with their opinions thereon, shall be laid before the Sessions Judge, who may examine any party or recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment, sentence, or order in the case as he thinks fit and as is according to law.

(3) Any person convicted by a Bench under this Section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

(5) Notwithstanding anything contained in this section the Local Govemment may, by notification in the local official Gazette, direct that all summons-cases tried under the provisions of this Chapter in any districs specified in the notification shall be tried as if they were warrant-cases in accordance with the provisions hereinafter in this Chapter laid down for the trial of warrant-cases. (S. 445).

Procedure in warrant-cases.

4. (1) Where a Magistrate or a Sessions Judge decides under S. 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under S. 209 or S. 253, as the case may be, commit the case for trial to the Court of Sessions, whether the case is or is not exclusively triable by that Court.

(2) Where an accused is committed to the Court of Session under sub-section (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of S. 275, and the provisions of that Section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly :

Provided that where the trial before the Court of Session would, in the ordinary course, be with the aid of assessors and the accused, or all of them jointly; require to be tried in accordance with the provisions of S. 284A, the trial shall be held with the aid of assessors, all of whom shall, in the case of European British subjects, be persons who are Europeans or Americans, or in the case of Indian British subjects, be Indians. (S. 446).

Court to inform accused persons of their rights in certain cases.

5. If at any stage of an inquiry or trial under this Code it appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter. (S. 447).

References to Sessions Judge to be construed as references to High Court in Rangoon.

6. For the purpose of the trial in Rangoon of any person under the provisions of this Chapter, references to the Sessions Judge shall be construed as references to the High Court of Judicature at Rangoon. (S. 448)

Special provisions relating to appeal.

7. (1) Where—

(*a*) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or,

(*b*) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or

(*c*) a case is tried by jury in the High Court in a presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency-town, have been triable under the provisions of this Chapter,

then, notwithstanding anything contained in S 418 or S. 423, sub-section (2), or in the Letters Patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(2) Notwithstanding anything contained in the Letters Patent of any High Court, the Local Govermment may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial as is referred to in sub-section. (1)

(3) An appeal under sub-section (1) or sub-section (2) shall, where the High Court consists of more than one Judge, be heard by two Judges of the High Court. (S. 449).

CHAPTER XXXIV.—LUNATICS (Ss. 464—475).

Procedure in case of accused being lunatic.

1. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence,

the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the exrmination to writing.

(1 A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of S. 466.

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case. (464).

Procedure in case of person committed before Court of Session or High Court being lunatic.

2. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if the jury or Court as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court. (S. 465).

Release of lunatic pending investigation or trial.

3. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Local Government.

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912. (S. 466).

Resumption of inquiry or trial.

4. (1) Whenever an inquiry or a trial is postponed under S. 464 or S. 465, the Magistrate or Court, as the case may be, may, at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under S. 466 and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence. (S. 467).

Procedure on accused appearing before Magistrate or Court.

5. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable or making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of S. 464 or S. 463, as the case may be, and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of S. 466. (S. 468).

When accused appears to have been

6. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Conrt, as the case may be. (S. 469).

Judgment of acquittal on ground of lunacy.

7. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not. (S 470).

Person acquitted on such ground to be detained in safe custody.

8. (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Local Government.

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.

Power of Local Government to relieve Inspector-General of certain functions.

(2) The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of S. 466 or this section to discharge all or any of the functions of the Inspector General of Prisons under S. 473 or S. 474. (S. 471).

Procedure where lunatic prisoner is reported capable of making his defence.

9. If such person is detained under the provisions of S. 466, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of S. 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence. (S. 473).

Procedure where lunatic detained under S. 466 or 471 is declared fit to be released.

10. (1) If such person is detained under the provisions of S. 466 or S. 471, and such Inspector-General or visitors shall certify that in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be released or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his release or detention as it thinks fit. (S. 474).

Delivery of lunatic to care of relative or friend.

11. (1) Whenever any relative or friend of any person detained under the provisions of S. 466 or S. 471 desires that he shall be delivered to his care and custody, the Local Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such Local Government that the person delivered shall—

(*a*) be properly taken care of and prevented from doing injury to himself or to any other person and

(*b*) be produced for the inspection of such officer, and, at such times and places, as the Local Government may direct, and

(*c*) in the case of a person detained under S. 466, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (b), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of S. 468, and the certificate of the inspecting officer shall be receivable as evidence. (S. 475).

CHAPTER XXXV.—PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE. (Ss. 476—487).

Procedure in cases mentioned in S. 195.

1. (1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in S. 195, sub section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate, or, if the alleged offence is non-bailable, may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

For the purposes of this sub-section a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under S. 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided. (S. 476).

What powers have Courts in general to deal with offences committed before it or brought under its notice in the course of a judicial proceeding? Does the power extend to all offences? State the procedure for exercising the powers C. U. 1919 (a).

Superior Court may complain

1A. The power conferred on Civil, Revenue and Criminal Courts by S. 476, sub-sec. (1), may be exercised, in respect

where subordinate Court has omitted to do so.

of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of S. 195, sub-sec. (3), in any case in which such former Court has neither made a complaint under S. 476 in respect of such offence nor rejected an application for the making of such complaint; and, where superior Court makes such complaint, the provisions of S. 476 shall apply accordingly. (S. 476-A).

Appeals.

1B. Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under S. 476 or S. 476-A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of S. 195, sub-section (3), and the superior Court may, thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, itself make the complaint which the subordinate Court might have made under S. 476, and it it makes such complaint the provisions of that section shall apply accordingly. (S. 476-B.)

Power of Civil and Revenue Courts to complete inquiry and commit to High court or Court of Session.

2. (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court, in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under S. 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purposes of an inquiry under this section the Civil or Revenue Court may exercise all the powers of a Magistrate and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII and of Chapter XXXIII in cases where that Chapter applies and shall be deemed to have been held by a Magistrate. (S. 478).

Procedure of Civil or Revenue Court in such cases.

3. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence. (S. 479).

Procedure in certain cases of contempt.

4. (1) When any such offence as is described in S. 175 S. 178, S. 179, S. 180 or S. 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or

Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for term which may extend to one month, unless such fine be sooner paid.

(2) Nothing in S. 29A or in Chapter XXXIII shall be deemed to apply to proceedings under this Section. (S. 480).

Record in such cases.

5. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under S. 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult. (S. 481).

Procedure where Court considers that case should not be dealt with under S. 480.

6. (1) If the Court in any case considers that a person accused of any of the offences referred to in S. 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under S. 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided. (S. 482).

When Registrar or Sub-Registrar to be deemed a Civil Court within Ss. 480 and 482.

7. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877 shall be deemed to be a Civil Court within the meaning of Ss. 480 and 482. (S. 483).

Discharge of offender on submission or apology.

8. When any Court has under S. 480 or S. 482 adjudged an offender to punishment or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submissien to the order or requisition of such Court or on apology being made to its satisfaction. (S. 484).

Imprisonment or committal of person refusing to answer or produce document.

9. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of S. 480 or S. 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt. (S. 485).

Appeals from convictions in contempt cases.

10. (1) Any person sentenced by any Court under S. 480 or S. 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by an officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made, if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency towns, to the High Court. (S. 486).

Certain Judges and Magistrates not to try offences referred to in S. 195 when committed before themselves.

11. (1) Except as provided in Ss. 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, shall try any person for any offence referred to in S. 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in S. 476 or 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court. (S. 487).

CHAPTER XXXVI—MAINTENANCE OF WIVES AND CHILDREN. (SS. 488-490).

Order for maintenance of wives and children.

1. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding one hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order or if so ordered from the date of the application for maintenance.

Enforcement of order.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying, fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

How can a woman who has been abandoned by her husband compel him to maintain her ? How does a criminal court enforce its order of maintenance ? C.U. 1919(a).

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall concel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown on application made within three months from the date thereof.

(7) The Court in dealing with application under this section shall have power to make such order as to cost as may be just.

(8) Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child. (S. 488).

Alteration in allowance.

2. (1) On proof of a change in the circumstance of any person receiving under S. 488 a monthly allowance, ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit : Provided that if he increases the allowance the monthly rate of one hundred rupees in the whole be not exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court any order made under S. 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly. (S. 489).

Enforcement of order of maintenance.

3. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the indentity of the parties and the non-payment of the allowance due. (S. 490).

CHAPTER XXXVII.—DIRECTIONS OF THE NATURE OF A HABEAS CORPUS. (Ss. 491—491-A)

Power to issue directions of the nature of a *Habeas Corpus*.

1. (1) Any High Court may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law ;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial and;

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Enumerate briefly the powers of the High Court with reference to directions in the nature of a Habeas Corpus. C. U. 1900.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1858. (S. 491).

[**Note.**—*Habeas Corpus*, the most celebrated writ in the English law, is a remedy for a person deprived of his liberty. It is addressed to him who detains another in custody, and commands him to produce the body, with the day and cause of his caption and detention and to do, submit to and receive whatever the Judge or Court shall consider in that behalf. (Wharton)]

Powers of High Court outside the limits of appellate jurisdiction

1A Any High Court established by Letters Patent may exercise the powers conferred by S. 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Governor General in Council may direct. (S. 491-A).

PART IX – Supplementary Provisions : (Ss. 492 – 565)

CHAPTER XXXVIII.—PUBLIC PROSECUTOR: (Ss. 492-495)

Power to appoint Public Prosecutors.

1. (1) The Governor General in Council or the Local Government may appoint, generally, or in any, case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Local Government may prescribe in this behalf to be Public Prosecutor for the purpose of any case. (S. 492).

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders privately instructed to be under his direction.

2. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Effect of withdrawal from prosecution.

3. Any Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal,—

(*a*) if it is made before a charge has been framed the accused shall be discharged in respect of such offence or offences ;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences (S. 494).

Permission to conduct prosecution.

4. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Local Government in this behalf, but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by S. 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted. (S. 495).

CHAPTER XXXIX.—BAIL. (Ss. 496-502).

In what cases bail to be taken.

1. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Provided further, that nothing in this section shall be deemed to affect the provisions of S. 107, sub-sec. (4), or S. 117, sub-section (3) (S. 496).

When bail may be taken in case of non-bailable offence.

2. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.

(4) If at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody. (S. 497.)

Power to direct admission to bail or reduction of bail.

3. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive : and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced. (S. 498.)

Bond of accused and sureties.

4. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge. (S. 499).

Discharge from custody.

5. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, S. 496 or S. 497 shall be deemed to require the release of any person liable to be detained for some matter other than in respect of which the bond was executed. (S. 500).

Power to order sufficient bail when that first taken is insufficient.

6. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail. (S. 501).

Discharge of sureties.

7. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody. (S. 502).

CHAPTER XL. COMMISSIONS FOR EXAMINATION OF WITNESSES (Ss. 503-508).

When attendance of witness may be dispensed with. Issue of commission and procedure thereunder.

1. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) When the witness resides in the territories of any Prince or Chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he, or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India. (S. 503).

Commission in case of witness being within presidency town.

2. (1) If the witness is within the local limits of the jurisdiction of any Magistrate, the Presidency Magistrate or Court issuing the commission may direct the same to such Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(1A) When a commission is issued under this section to a Chief Presidency Magistrate, he may delegate his powers and duties under the commission to any Presidency Magistrate subordinate to him.

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876, S. 3. (S. 504).

Parties may examine witnesses.

3. The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or

Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed or to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness. (S. 505).

Power of provincial Subordinate Magistrate to apply for issue of commission.

4. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application. (S. 506).

Return of commission.

5. (1) After any commission issued under S. 503 or S. 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by S. 33 of the Indian Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another Court. (S. 507).

Adjournment of inquiry or trial.

6. In every case in which a commission is issued under S. 503 or S. 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission. (S. 508).

CHAPTER XLI. SPECIAL RULES OF EVIDENCE. (Ss. 509-512).

1. (1) **Deposition of Medical witness**—The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other

proceeding under this Code, although the deponent is not called as a witness.

(2) **Power to summon medical withness.**—The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition. (S. 509).

2. **Report of Chemical Examiner.**—Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. (S. 510.).

How may the previous conviction of acquittal of an accused be proved in a subsequent trial? C. U. 1926 (a)

3. **Previous conviction or acquittal how proved.**—In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved in addition to any other mode provided by any law for the time being in force—

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order, or,

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted. (S. 511).

Where an accused person has absconded and is subsequently arrested, can evidence recorded at a former trial be used against

4. **Record of evidence in absence of accused.**—(1) If it is proved (*a*) *that an accused person has absconded* and (*b*) *that there is no immediate prospect of arresting him*, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced

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him? State shortly and illustrate your views. C. U. 1900

When is it permissible to examine a witness for the prosecution in the absence of the accused and under what circumstances can the deposition so taken be given in evidence against the accused at his trial? C. U 1914 (a). Mention the circumstances under which the evidence of a witness may be recorded in the absence of an accused? How and when can such evidence be used at a trial? C. U. 1923 (b)

on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, (*i*) if the deponent is dead or (*ii*) incapable of giving evidence or (*iii*) his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) **Record of evidence when offender unknown.**—If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class hold an enquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of British India. (S. 512).

Note.—This Section must be interpreted as giving a court jurisdiction to take deposition in the absence of the accused only in cases where it has been proved to its satisfaction (*i*) that the accused has absconded and (*ii*) that there is no immediate prospect of arresting him.

CHAPTER XLII.—PROVISIONS AS TO BONDS. (Ss. 513-516).

Deposit instead of recognizance.

1. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond, (S. 513).

Procedure on forfeiture of bond.

2. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the attachment and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(7) When any person who has furnished security under S. 106 or S. 118 or S. 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond, under S. 514B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall persume that such offence was committed by him unless the contrary is proved. (S. 514).

Procedure in case of insolvency or death of surety or when a bond is forfeited.

3A. When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of S. 514, the Court by whose order such bond was taken or a Presidency Magistrate or Magistrate of the first class, may order the person from whom such security was demanded to funish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order, (S. 514-A).

Bond required from a minor.

3B. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept in lieu thereof, a bond executed by a surety or sureties only. (S. 514-B).

Appeal from, and revision of, orders under S. 514.

4. All orders passed under S. 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him. (S. 515).

Power to direct levy of amount due on certain recognizances.

5. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session. (S. 516).

CHAPTER XLIII.—DISPOSAL OF PROPERTY.

(Ss. 516-A—525).

Order for custody and disposal of property pending trial in certain cases.

1A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal court during any inquiry or trial, the Court may make such order, as it thinks fit, for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. (516-A).

Order for disposal of property regarding which offenc committed.

2. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its cutody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions

of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

Explanation.--In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise. (S. 517).

Orders may take form of reference to District or Sub-divisional Magistrate.

3. In lieu of itself passing an order under S. 517, the Court may direct the property to be delivered to the District Magistrate or to a sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned. (S. 518).

Payment to innocent purchaser of money found on accused.

4. When any person is convicted of any offence which includes, or amount to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him. (S. 519).

Stay of order under S. 517, 518 or 519.

5. Any Court of appeal, confirmation, reference or revision may direct any order under S. 517, S. 518 or S. 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just. (S. 520).

Destruction of libellous and other matter.

6. (1) On a conviction under the Indian Penal Code, S. 292, S. 293, S. 501 or S. 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, S. 272, S. 273, S. 274 or S. 275, order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed. (S. 521).

Power to restore posses-

7. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal

sion of immoveable property.

intimidation and it appears to the Court that by such force or show of force or by ciminal intimidation any person has been dispossessed of any immoveable property. the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction, order the person dispossessed to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision. (S. 522).

Procedure by police upon seizure of property taken under S. 51 or stolen.

8 The seizure by any Police-officer of property taken under S. 51, or alleged or supected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation. (S. 523).

Procedure where no claimant appears within six months.

9. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf.

(2) In the case of every order passed under this section an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie. (S. 524).

Power to sell perishable property.

10. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would

be for the benefit of the owner or that the value of such property is less than ten rupees, the Magistrate may at any time direct it to be sold; and the provisions of Ss. 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale. (S. 525).

CHAPTER XLIV.—TRANSFER OF CRIMINAL CASES. (Ss. 526-528).

1. High Court may transfer case or itself try it.—(1) Whenever it is made to appear to the High Court:—

State the grounds on which an application may be made to the High Court for transfer of a criminal case from a subordinate Court. C. U. 1912 (a).

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

Under what circumstances can the High Court transfer a criminal case from one Court to another under the Cr. P. C.? C. U. 1914 (a), 1922 (a), 1924 (a).

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order—

(*i*) that any offence be inquired into or tried by any Court not empowered under Ss. 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

State (a) the procedure by which and (b) grounds upon which the transfer of a criminal case or appeal can

(*ii*) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(*iii*) that any particular case or appeal be transferred to and tried before itself; or

be obtained under S. 526. of the Cr. P. C.? C. U. 1903. What are the grounds upon which the High Court can grant a transfer of a criminal case and what is the nature of the order that can be passed? C. U. 1906. Under what circumstances can the High Court transfer a criminal case? C. U. 1910 (a), 1915 (b). What happens to the pending proceeding? C. U 1910 (a). On what grounds may the High Court transfer a case? C. U. 1928 (a). What are the powers of the High Court to transfer a criminal case from one Court to another, and on what grounds may it do so? C. U. 1927 (b).

(*iv*) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in S. 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court has power under this section to award by way of costs to the person opposing the application.

(6) **Notice to Public Prosecutor of application under this section.**—Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of costs to any person who has opposed the application any expenses reasonably incurred by such person in consequence of the application.

(7) Nothing in this section shall be deemed to affect any order made under S. 197.

(8) **Adjournment on application under this Section.**—If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.

(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it. (S. 526).

1A. **High Court to transfer for trial to itself in certain cases.**—(1) When any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any offence such as is referred to in proviso (a) to S. 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter proceed to try the case by jury.

(2) The Governor-General in Council may, by notification in the Gazette of India, declare any officer to be the competent authority for the purpose of issuing instructions under sub-section (1) in regard to any class of cases specified in the notification (S. 526A).

2. **Power of Governor-General in Council to transfer case and appeals**—(1) The Governor General in Council may, by notification in the Gazette of India, direct the transfer of any particulcr case or appeal from one High Court to another High Court, or

from any Criminal Court subordinate to one High Court, to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to such Court (S. 527).

3. (1) **Sessions Judge may withdraw cases from Assistant Sessions Judge.**—Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.

(2) **District or Sub-divisional Magistrate may withdraw or refer cases.**—Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(3) **Power to authorize District Magistrate to withdraw classes of cases.**—The Local Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(4) Any Magistrate may recall any case made over by him under S. 192, sub-section (2), to any other Magistrate and may inquiry into or try such case himself.

(5) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(6) The head of a village under the Madras Village-police Regulation, 1816, or the Madras Village-police Regulation, 1821, is a Magistrate for the purposes of this section (S. 528).

CHAPTER XLIV-A—SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN BRITISH SUBJECTS AND OTHERS. (SS. 528-A—528-D)

1. **Procedure on claim of a person to be dealt with as European or Indian British subject or as European or American.**— (1) Where, *in any case to which the provisions of Chapter XXXIII do not apply*, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject or an Europen or an American, as the case may be and shall deal with him accordingly.

A, an Indian British subject, is on the complaint of X, an European British subject, committed by a Presidency Magistrate to take his trial before the High Court At what stage can A put forward his claim to be tried as an Indian British subject and with what consequence? C.U. 1927 (a).

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any, as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid, the decision shall form a ground of appeal from the sentence or order passed in such trial, (S. 528-A).

2. **Failure to plead status a waiver.**—If in any such case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected by the committing Magistrate, it is not repeated before the Court to which such person is committed he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall not assert it in any subsequent stage of the case. (S. 528-B).

3. **Trial of person as belonging to class to which he does not belong.**—Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject is dealt with as an Indian British subject, or, not being an European (other than an European British subject) or American is dealt with as an European or American and such person does not object, the

inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid. (S. 528-C).

4. **Application of Acts conferring jurisdiction on Magistrates or Court of Session.**—(1) Unless there is something repugnant in the context all enactments made by the Governor General in Council or the Indian Legislature which confer on Magistrate or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on the European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects. (S. 528-D).

CHAPTER XLV.—IRREGULAR PROCEEDINGS. (Ss. 529-538).

A Magistrate at Hoogly tries and convicts an accused for an offence committed within the local jurisdiction of the District of Burdwan. Discuss the legal effect of the procedure. C.U. 1918 (a).

A Magistrate tries and convicts an accused. It appears that the place where the offence was committed was outside the local jurisdiction of the Magis-

1. **Irregularities which do not vitate proceedings.**—If any Magistrate not empowered by law to do any of the following things, namely—

(*a*) to issue a search-warrant under S. 98;

(*b*) to order, under S. 155, the police to investigate an offence;

(*c*) to hold an inquest under S. 176;

(*d*) to issue process, under S. 186, for the apprehension of a person within the local limit of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognizance of an offence under S. 190, sub-section (1), cl. (a) or cl. (b);

(*f*) to transfer a case under S. 192;

(*g*) to tender a perdon under S. 337 or S. 338;

(*h*) to sell property under S. 524 or S. 525; or

(*i*) to withdraw a case and try it himself under S. 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered. (S. 529).

2. Irregularities which vitate proceedings—If any Magistrate, not being empowered by law in this behalf does any of the following things, namely :—

(*a*) attaches and sells property under S. 88 ;

(*b*) issues a search-warrant for a letter, parcel or other things in the Post Office, or a telegram in the Telegraph Department ;

(*c*) demands security to keep the peace :

(*d*) demands security for good behaviour ;

(*e*) discharges a person lawfully bound to be of good behaviour ;

(*f*) cancels a bond to keep the peace ;

(*g*) makes an order under S. 133 as to a local nuisance ;

(*h*) prohibits under S. 143, the repetition or continuance of a public nuisance ;

(*i*) issues an order under S. 144 ;

(*j*) makes an order under Chapter XII ;

(*k*) takes cognizance, under S. 190, sub-section (1), cl. (c), of an offence ;

(*l*) passes a sentence, under S. 349, on proceedings recorded by another Magistrate ;

(*m*) calls, under S. 435, for proceedings ;

(*n*) makes an order for maintenance ;

(*o*) revises, under S. 515, an order passed under S. 514 ;

(*p*) tries an offender ;

(*q*) tries an offender summarily ; or

(*r*) decides an appeal ;

his proceedings shall be void. (S. 530).

3. Proceedings in wrong place.—No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division,

trate. Discuss the legal effect of the procedure. C. . 1917 (a).

A Magistrate at Nasik committed a case to the Sessions at Nasik which had no local jurisdiction. Was the commitment good or bad ? C. U. 1914 (b).

A Magistrate commits an accused to the Court of Session. It appears that he had no power to commit. Discuss the legal effect of the procedure. C. U. 1917 (a), 1918 (a).

A Magistrate convicts an accused in a warrant case without drawing up a formal charge. Discuss the legality of the procedure. C.U. 1918 (a), 23 (a).

What is the effect of the following irregularity:— A Magistrate decides an appeal, not being empow-

ered in that behalf C. U. 1923 (a).

district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice (S. 531).

4. When irregular commitments may be validated.—If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

What is the effect (i) of a trial by jury of an offence triable with assessors, (ii) of a trial by assessors of an offence triable by jury? C. U. 1902, 1906, 1917(a).

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate. (S. 532).

Write a short note on the effect of an error in a charge. C.U. 1916 (a).

5. Non-compliance with provisions of S. 164 or 364.—(1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under S. 164 or S. 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and notwithstanding anything contained in the Indian Evidence Act, 1872, S. 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

When can a finding, sentence or orders of a Court of competent jurisdiction be reversed on the ground of error or irregularity? C.U. 1910 (a).

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision. (S. 533).

6. Omission to give information under S. 447.—An omission to inform under S. 447 any person of his rights under Chapter XXXIII, shall not affect the validity of any proceeding. (S. 534).

During the trial of a prisoner, the Sessions Judge did not call on the prisoner to enter on his defence nor did he charge the jury as requir-

7. Effect of omission to prepare charge.—(1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge. (S. 535).

8. (1) Trial by jury of offence triable with assessors.—If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

(2) Trial with assessors of offence triable by jury.—If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding. (S. 536).

7. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.—Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

(*a*) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any injury or other proceedings under this Code, or

(*c*) of the omission to revise any list of jurors or assessors in accordance with S. 324, or

(*d*) of any misdirection in any charge to a jury unless such error, omission, irregularity, or misdirection has in fact occasioned a failure of justice.

ed by S. 297 of Code. What is your view of these iregularities? C.U. 1914(b).

Discuss the legality of the procedure in any two of the following cases: —A Magistrate tries and convicts an accused person. It appears he had no jurisdiction to try the accused. C.U. 1914(a).

What is the effect of the following irregularity:—A Sessions Judge tries an offender with the aid of assessors but the offence is triable only by a Jury. C.U. 1923 (a).

State generally the provisions of the Cr. P. C. as to irregular proceedings. C.U. 1914 (b).

Which of any of the following three cases disclose irregularities which would render the proceedings

void :—When a Magistrate erroneously not being empowered by law to do so but acting in good faith (a) took cognizance of the offence charged upon his own knowledge of the fact of the case; (b) issued a warrant for the apprehension of the accused for offence committed outside his local jurisdiction, (c) tried the accused C.U. 1908.

Explanation.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. (S. 537).

10. Attachment not illegal, person making same not trespasser for defect or want of form in proceedings.—No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto. (S. 538).

[**Problems.**—(1) What would be the effect of the following irregularities? A Magistrate not empowered in that behalf—(*a*) transfers a case under Sec. 192 of the Criminal Procedure Code; (*b*) demands security to keep the peace; (*c*) withdraws a case and tries it himself under Sec. 528 of the Criminal Procedure Code; (*d*) tries an offender; (*e*) decides an appeal. [C. U. 1924 (a).]

(2) What are the legal consequences of a Magistrate doing in good faith the following acts not being empowered to do so:—(*a*) Cancelling a bond to keep the peace; (*b*) Issuing a search warrant; (*c*) Tender a pardon. [C. U. 1920 (a).]

(3) State what would be the effect of a Magistrate doing the following things in good faith, but not being empowered by law in that behalf:—(*a*) Trying an offender summarily [C. U. 1918 (*b*), 1923 (*a*).]; (*b*) Withdrawing a case to his own file; (*c*) Issuing a search-warrant; (*d*) Demanding security for good bohaviour. [C. U. 1918 (*b*).]

(4) A Magistrate who is not authorised by law to do so, commits an accused for trial to the Court of Session. Discuss the legality of the procedure. [C. U. 1920 (*b*).]

(5) What is the legal consequence in each of the following cases:—A Magistrate not empowered in that behalf.—(*a*) Takes cognizance of an offence under S. 190

(1), *(a)*, Cr. P. C ; (*b*) Demands security for good behaviour; (*c*) Tries an offender *(d)* Transfers a case under S. 192, Cr. P. C. [See S. 529 (*e*) & (*f*) and S. 530 (*d*) & (*f*)] C. U. 1923 (*b*).

(6) A Magistrate not being empowered by law in this behalf does the following things. What is the legal effect in each case—(*a*) Demands security to keep the peace: (*b*) orders the police to investigate an offence in a non-cognizable case ; (*c*) tenders pardon to an accomplice ; (*d*) makes an order for maintenance ; (*e*) tries an offender summarily. [See S. 530 (*c*), (*n*) & (*q*) & S. 529 (*b*), & (*g*).] C. U. 1924 (*b*).

(7) What is the effect of the following proceedings taken in good faith by a Magistrate who is not empowered by law in that behalf:—(*a*) Takes cognizance of an offence upon a police report [See S. 529 (*e*)] ; (*b*) makes an order for maintenance [See S. 530 (*n*)] ; (*c*) decides an appeal [See S. 530 (*r*)] ; (*d*) orders the police to investigate an offence [See S. 529 (*b*)]; (*e*) demands security to keep the peace. [See S. 530 (*c*)]. C. U. 1925 (*a*).

(8) A Magistrate not being empowered by law in that behalf erroneously but in good faith, (*a*) issues a search warrant [See S. 529 (*a*)] ; (*b*) tries an offender (S. 530 (*p*)] ; (*c*) demands security to keep the peace [S. 530 (*c*)] ; (*d*) withdraw a case to his own file [S. 529 (*i*)] (*e*) takes cognigance of an offence on suspicion [S. 530 (*k*).] What is the effect of the irregularities in each of the above cases? C. U. 1925 (*b*).

(9) If a Magistrate not empowered by law to do any of the following things does it, will the proceedings be vitiated :—(*a*) Takes cognizance of an offence on a police report [S. 529 (*e*).] (*b*) Issues a search warrant for a forged documnt [S. 529 (*a*)]; (*c*) Demands security for good behaviour [S. 530 (*d*)] ; (*d*) Tries an offender summarily [S. 530 (*q*)] ; (*e*) Prohibits the continuance of a public nuisance. [S. 530 (*n*)] C. U. 1928 (*a*).

CHAPTER XLVI.—MISCELLANEOUS.
(Ss. 539—565).

Courts and persons before whom affidavits may be sworn.

1. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorised to take affidavits or affirmations in Scotland. (S. 539).

Affidavit in proof of conduct of public servant.

1A. (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in S. 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended. (S. 539-A).

Local inspection.

1B. (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost: Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under S. 293. (S, 539-B).

2. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code. summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case. (S. 540).

Power to summon material witness or examine person present.

2A. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may at any subsequent stage of the proceedings direct the personal attendance of such accused.

Provision for inquiries and trial being held in the absence of accused in certain cases.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial or order that the case of such accused be taken up or tried separately. (S. 540-A).

3. (1) Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3). When a person is removed to a criminal jail under sub-sec (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under S. 342 of the Code of Civil Procedure; or

(*b*) the Court which ordered his impisonment in the civil jail his certified to the officer in charge of the criminal jail that he is entitled to be discharged under S. 341 of the Code of Civil Procedure. (S. 541).

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail and their return to the civil jail.

4. (1) Notwithstanding anything contained in the Prisoner's Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any

Power of Presidency Magistrate to order

prisoner in jail to be brought up for examination.

jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid. (S. 542).

Interpreter to be bound to interpret truthfully.

5. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement. (S. 543).

Expenses of complainants and witnesses.

6. Subject to any rules made by the Local Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code. (S. 544).

Power of Court to pay expenses or compensation out of fine.

7. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(*c*) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before decision of the appeal. (S. 545).

Payment to be taken into account in subsequent suit.

8. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under S. 545. (S. 546)

8A. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court if it convicts the accused, may in addition to the penalty imposed upon him order him to pay to the complainant—

Order of payment of certain fees paid by complainant in non-cognizable cases.

(a) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and

(b) any fees paid by the complainant for serving processes on his witness or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision (S. 546).

9. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine. (S. 547.)

Moneys ordered to be paid recoverable as fines.

10. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith. Provided that he pays for the same, unless the Court for some special reason thinks fit to furnish it free of cost. (S. 548.)

Copies of proceedings.

11. The Governor General in Council may make rules, consistent with this Code and the Army Act and the Air Force Act and any similar law for the time being in force, as to the cases in which persons subject to military or air force law shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, S. 41, or under the Air Force Act, S. 41 to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military or air force station, as the case may be, for the purpose of being tried by a Court-martial.

Delivery to military authorities of persons liable to be tried by Court-martial.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence. (S. 549).

Apprehension of such persons.

12. Any Police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion

Powers to Police to seize property

suspected to be stolen.

of the commission of any offence. Such Police-officer, if subordinate to the officers in charge of a police-station, shall forthwith report the seizure to that officer. (S. 550).

Powers of superior officers of Police.

13. Police-officer superior in rank to an officer in charge of a police-station may exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. (S. 551).

Power to compel restoration of abducted females.

14. Upon complaint made to a Presidency Magistrate or District Magistrate, on oath of the abduction or unlawful detention of a woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary. (S. 552).

Compensation to persons groundlessly given in charge in presidency-towns.

15. (1) Whenever any person causes a police-officer to arrest another person in a presidency town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested the Magistrate may, in like manner, award to each of them such compensation not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and if it cannot be so recovered the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid (S. 553).

Power of Chartered High Courts to make rules for inspection of records of subordinate Courts.

16. (1) With the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

(2) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,—

(a) make rules for keeping all books, entries and account to be kept in all Criminal Courts subordinate to it and for the preparation and transmission of any

returns or statements to be prepared and submitted by such Courts;

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(c) make rules for regulating its own practice and proceedings of all Criminal Courts subordinate to it; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the local official Gazette. (S. 554).

Forms.

17. Subject to the power conferred by S. 554 and by S. 107 of the Government of India Act, 1915, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned and if used shall be sufficient. (S. 555.)

Case in which Judge or Magistrate is personally interested.

18. No Judge or Magistrate shall except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case. (S. 556.)

Illustration—A, as Collector, upon consideration of information furnished to him directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Practising pleader not to sit as Magistrate in certain Courts.

19 No pleader who practises in the Court of any Magistrate in a presidency-town or district, shall sit as a Magistrate in such Court or in any Court within the jurisdictions of such Court. (S 557.)

Power to decide

20. The Local Government may determine what, for the purposes of this Code shall be deemed to be the language of each Court within the territories administered by such

language of Courts.

Government other than the High Courts established by Royal Chatter. (S. 558.)

Provision for powers of Judges and Magistrates being exercised by their successors in office.

21. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency town, and the District Magistrate outside such towns shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge. (S. 559).

Officers concerned in sales not to purchase or bid for property.

22. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property. (S 560).

Special provisions with respect to offence of rape by a husband.

23 (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife or

(b) commit the man for trial for the offence.

(2) And notwithstadding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer, with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make or to take part in the investigation. (S. 561).

Saving of inherent power of High Court.

23A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice (S. 561-A).

What are the provision of Indian Law in regard to the punishment of first offenders? Are they mandy?

24. Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment—(1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an

offence not punishable with death or transportation for life and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by S. 380.

(1A) **Conviction and release with admonition**—In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years' imprisonment, and no previous conviction is proved against him, the Court before whom he is so convicted, may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(2) An order under this section may be made by any Appeallate Court or by the High Court when exercising its power of revision.

Discuss. C. U. 1919 (b)

What is the meaning of a first offender ? C. U. 1906 Under what circumstances had the Court power to release instead of punishing such person ? C. U. 1906 1912 (a). 1913 (a). 1916 (a).

What is the procedure in the event of default. C. U. 1913 (a).

Under what circumstances can Court release an accused person on probation of good conduct ? C. U 1919 (b).

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court shall not under this sub-section inflict a greater punishment than might been inflicted by the Court by which the offender was convicted.

(4) The provisions of Ss. 122, 126A and 406A shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section (S. 562).

Provision in case of offender failing to observe conditions of his recognizance.

25. (1) If the Court which convicted the offender, or Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognisance it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence. (S. 563).

Conditions as to abode of offender.

26. (1) The Court, before directing the release of an offender under S. 562, sub-sec (1), shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period name for the observance of the conditions.

(2) Nothing in this section or in Ss. 562 and 563 sha affect the provisions of S. 31 of the Reformatory Schoo Act, 1897. (S. 564).

Order for notifying address of previously convicted offender.

27. **Previously convicted Offenders.**—When any perso having been convicted—

(a) by a Court in British India of an offence punisha under S. 215, S. 489A. S. 489B. S. 489C, or S. 48 of the Indian Penal Code, or of any offence pun able under Chapter XII or Chapter XVII of th Code, with imprisonment of either description a term of three years or upwards, or

(b) by a Court or Tribunal in the territories of a Prince or State in India acting under the gen or special authority of the Governor-General Council, or of any Local Government, of any offen which would, if committed in British India, ha

been punishable under any of the aforesaid sections or Chapter, of the Indian Penal Code with like imprisonment for a like term,

is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for term of three years or upwards by a High Court, Court of Session, Presidency, Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of or absence from, such residence after release be notified, as hereinafter provided, for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from, residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) Any person against whom an order has been made under this section and who refuses or neglects to comply with any rule so made shall be deemed, within the meaning of S. 176 of the Indian Penal Code, to have omitted to give a notice required for the purpose of preventing the commission of an offence.

(6) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated. (S. 565.)

APPENDIX—ADDITIONAL QUESTIONS.

1. What are the principles of Criminal Procedure laid down in the case of either *Barindra Kumar Ghosh* v. *Emperor*, I. L. R. 37 Cal. 467 or *Pulin Behari Das* v. *King Emperor*, 15 C. L. J. 517? [See University Selection of Leading Cases.]

2. A and B, co-owners of certain immovable preperty, each claiming to have the property exclusively to himself, prepare to oust the other by force, and there is imminent likelihood of a breach of the peace. This is brought to the notice of a Magistrate of the First class who, on taking evidence, finds both A and B. to be in joint possession of the property. What orders is it open to the Magistrate in such a case to pass and why? [See S. 107 and Ss. 144 to 146.]

2 A. A and B engage in a dispute over the possession of immovable property likely to cause a breach of the peace. The Sub-divisional Magi trate, on March 11, 1929, draws up a proceeding under S. 145 of the Code of Criminal Procedure and on taking evidence finds that on the date of the proceeding A was in possession of the property after wrongfully and forcibly dispossessing B therefrom on February 4, 1929 What order should the Magistrate pass and why? Would it make any difference if such dispossession of B took place on January 4, 1929? [See S. 145.]

3. Where can A be tried in *any two* of the following cases, and why?—

(*a*) A, in Calcutta, instigates B to commit theft in the house of C, at Howra, in consequence of which B commits the theft at Howra.

(*b*) A and B travel together from Howra to Purulia. In the course of the journey, A removes from B's pocket a Government Currency note of Rs. 100 at Midnapur and hands it over to a confiderate of his at Bankura. In going from Howra to Purulia, A and B pass through four districts, *viz*. Howra Midnapur, Bankura and Manbhum.

(*c*) A, in the course of committing a docoity at Hoogly, commits a murder there and is subsequently arrested at Faridpur and charged with having committed docoity with murder.

(*d*) A, B and C conspire in Calcutta to wage war against His Majesty. In furtherance of the conspiracy, A collects funds at Allahabad, B procures arms at Lucknow and C enlists men at Lahore. [See S. 177 et seq.]

4. A is tried on a charge of murder in the High Court Session The Jury, by a majority of 5 to 4, find A guilty of the offence charged. What is the presiding Judge to do? Would it make any difference if the trial took place before a Sessions Judge and a Jury in muffussil with the same result? [See pp. 187 and 203.]

4 A. Under what circumstances can an Indian British subject, in his trial before a Court of Sessions, claim to be tried by a Jury containing a majority of his countrymen? [See S. 275 and Chapters XXXIII and XLIVA] C. U. 1929 (*b*).